

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, January 10, 2013**

SUBJECT	DESCRIPTION	PRESENTER
	Welcome and Introduction	Chairman Siddoway
	Distribution of Pending Rules for Review	Vice Chairman Rice
	Overview of Supplemental Documents	Chairman Siddoway

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

Phone: 332-1315

email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, January 10, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators McKenzie, Johnson, Vick, Bayer, Werk, Lacey

**ABSENT/ EXCUSED:** Senator Hill

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting to order at 3:02 p.m.

**Chairman Siddoway** welcomed the Committee Members to the 2013 Session. He introduced the Senate Page for this Committee, **Brooks Nielson**, and invited him to the podium to share a little about himself. He is a student at Centennial High School and plans to go to Utah State for school. **Chairman Siddoway** thanked **Brooks** for his participation this session. The regular Committee Secretary, **Christy Stansell**, will be back for the next Committee meeting.

**Chairman Siddoway** brought the Committee's attention to the binders provided at their desks. He let the Committee know that the two big white binders are full of background information that is available to them to help their understanding of tax policies. The black binder contains a very detailed report from the Idaho State Tax Commission on the Personal Property Tax calculations for every district in Idaho. **Chairman Siddoway** said the members are welcome to take the binders with them, as long as they are returned, or they may be stored in the Committee Secretary's office for their use at any time. Also in the packet was a list of the Pending Rules and the assignments to the Committee members for their review.

**Chairman Siddoway** invited each of the Committee Members to share why they elected to be on the Local Government and Taxation Committee. **Chairman Siddoway** stated he believes the Committee would collectively set tax policies for the good of the citizens of Idaho.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:16 p.m. until Tuesday, January 15 at 3:00 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, January 15, 2013**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS21617</a>	Relating to Appeals from the County Board of Equalization	Chairman Siddoway
<a href="#">36-0101-1201</a>	Pending Rules relating to the Idaho Board of Tax Appeals	Steve Wallace, Director, Board of Tax Appeals

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, January 15, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk, Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting to order at 3:00 p.m.

**RS21617** **Chairman Siddoway** introduced RS21617 relating to Appeals from the County Board of Equalization. He explained that the main purpose of the bill is a date change. It removes the reference to a deadline of October 1, and provides that appeals be submitted within 30 days of notification.

**MOTION:** **Senator Werk** moved, seconded by **Senator Vick**, to print the proposed legislation. Motion carried by **voice vote**.

**PASSING OF GAVEL:** **Chairman Siddoway** passed the gavel to **Vice Chairman Rice** for the consideration of the pending rules.

**DOCKET NO. 36-0101-1201** **Vice Chairman Rice** invited to the podium **Steve Wallace**, Director and Clerk to the Board at the Idaho Board of Tax Appeals, to outline the pending rules relating to the Idaho Board of Tax Appeals.

Before he began the description of the rule changes, **Mr. Wallace** explained how the Board of Tax Appeals operates like any court, to fairly hear and timely decide contested cases. He said that to do this fairly, they use a set of procedural rules, which are being reviewed this day. He said it may seem there are a lot of changes, but this has not been done in some time. The goal is to incorporate user-friendly language and clarify improvements, fix typos and change plurals to singular reference, as well as create internal consistency in the rules. This year's review will substantially reduce the total volume of language in the rules. He said the biggest reduction came from eliminating redundancies. **Mr. Wallace** also noted that there have not been any public comments nor concerns regarding these pending rules. He said there is nothing of controversy to create the need for negotiated rule-making.

**Mr. Wallace** explained that the rules for Board of Tax Appeals were modeled after the rules from the Office of the Attorney General. He said it used to be that when someone looked for a rule, they had to look in two places for it, but now it has been consolidated into one place, and today's rules review is the culmination of that combination.

Most changes being addressed today are "housekeeping in nature," said **Mr. Wallace**, but a few items are being eliminated, and he'd like to draw the Committee's attention to those.

The first is regarding Public Witness, Rule 86. He shared an example of a situation regarding the Public Witness rule that triggered discussion about its removal. He described a case in northern Idaho of a hearing between a taxpayer and the property tax assessor. He said someone wanted to come and participate as a Public Witness, and when it was his turn to speak, he turned the chair around, stood on it and started speaking to the audience on another topic unrelated to the case. The hearing officer completed the case that day and then brought the issue to the attention of the Board of Tax Appeals. **Mr. Wallace** said they sought the opinion of the Idaho Attorney General and the Board was told it is not necessary for the Board of Tax Appeals to have a Public Witness rule. **Mr. Wallace** said the Public Witness mechanism is helpful in a licensing or rate-making or similar cases in which the public's perception of fairness in the process is important to the decision making.

**Mr. Wallace** also pointed out that these Board of Tax Appeals procedural rules, as well as the Administrative Procedures Act, represent the minimum process or procedure that would be required in trying a case. It is permitted for a hearing officer to go beyond these minimums, and that happens on a somewhat regular basis. The purpose is to streamline the procedural rules to make them easier for participants to use, while also recognizing there are other provisions in place in other materials that allow for Public Witnesses if needed.

The next rule that is eliminated in this document is Rule 63, relating to Pleadings. He said this rule hasn't been used or even discussed in at least fourteen years. **Mr. Wallace** described that just about everything filed in the Board of Tax Appeals goes in the category of Pleadings. He said people will occasionally forget to attach a page or an exhibit and they wish to change something they've filed with the Board. This rule relates to how people would do that in a way that is not useful or beneficial to the participants or the Board's style of administrative law. Therefore, they prefer to save the space in the rules and eliminate this one. **Mr. Wallace** said people still have the opportunity to amend or withdraw a pleading, but it doesn't happen because of this rule.

**Mr. Wallace** directed the Committee Members to a new Rule 66.03, relating to Fax Filing. He stated that they use faxes quite a bit in the Board of Tax Appeals office as email does not work very well for them, and while they utilize fax machines, there has not been a rule or procedure in place for what is permitted for Fax Filing.

**Senator Hill** stated that a lot more people have access to email than they do to fax machines and asked why a person could not send a signed PDF document via email, particularly with the requirement that the original needs to be mailed the same day, instead of needing to search for a fax machine.

**Mr. Wallace** replied that is a very good question, and the Board does allow a little bit of communication through email; however, it does present issues on occasion, especially with Services, meaning if someone is going to file something with the court, the other party needs to be notified at the same time in the same way. He noted that 80-percent of people will have an interaction only one time with the Board and will not develop the expertise to handle these matters or ex-parte concerns. **Mr. Wallace** said sometimes typing an email and talking on cell phones will become more casual than is required for the legal work the Board does. He said their goal is to ensure impartial decisions and fairness, and make sure both sides have equal information and equal access to the judge.

**Senator Hill** stated he accepts **Mr. Wallace's** judgement on that and asked that digital correspondence be considered in the future, especially because the Fax Filing rule is limited to very specific documents that can be faxed.

**Senator Werk** said he noticed the rules are not incorporating much technology and that the agency is pretty paper heavy, and he was going make the same recommendation as **Senator Hill**, that the Board of Tax Appeals look into an online process as a possibility to make it more customer friendly. **Mr. Wallace** acknowledged his appreciation for these comments from **Senator Hill** and **Senator Werk**.

**Vice Chairman Rice** asked **Mr. Wallace** about Rule 117.05 that changes the timing of objections to evidence from the time evidence is offered to the time of the objection so long as it's before the start of closing arguments, and if there is some reason for allowing objections that could potentially be days after the evidence is offered.

**Mr. Wallace** answered by explaining the hearing process in more detail. He said the majority of the cases they hear are small, representing a small business or a home or market value appeal of the valuation of a home, or an income tax refund lower than \$500, such that in those cases, people do not retain an attorney to go through a more formal procedure. Less than 20-percent of the cases have Certified Public Accountants or other tax experts or tax attorneys involved.

He said this particular rule is what works in the hearings for the individual taxpayer. The Board is able to hear about four cases per day at an hour and a half each to help them stay within their budget and take a minimum amount of time away from Tax Commissioners, and still lets the taxpayer present their case. The procedure has them swear in everyone together at the beginning of the hearing and there is not direct or cross examination as they do all of their questions at one time. So, if there is an objection, it needs to be logged on the record before the closing arguments.

**Senator Rice** asked about the changes in the rules regarding Post-Hearing Evidence, and how Rule 117.09 seems to take the place of Rule 140.02. He asked about the reasoning of "no post-hearing evidence will be accepted unless allowed by the presiding officer" instead of "no post-hearing evidence will be accepted unless requested by the Board."

**Mr. Wallace** replied that he does not believe the purpose was to change the rule but to reorganize the same policy into a better location. The new language is what is said at the end of the hearing, where the parties are verbally instructed that this is the date, time and place for the case to be presented, and unless there are specific directions from a hearing officer to submit something post-hearing, it will not be accepted. That lets the parties know that if there is something else they need to submit, they need to disclose that to the hearing officer before the case is closed. The purpose is to prevent situations where a person goes out to the car after the hearing and says, "Darn, I forgot to give them this other document in my pocket." That doesn't work because it would mean reopening the case.

**Senator Rice** asked about Rule 148.06, removing the requirement that there will be findings of fact and conclusions of law in the decisions. **Mr. Wallace** replied that he would like the opportunity to research that. The Board has been operating for many years with the understanding that the conclusions of law and findings of fact are done in every single decision that is issued. He said he thinks that standard might already exist in Idaho's Administrative Procedures. He stated the Board considers the fine line of how much law they repeat in their procedural rules, and if is there a benefit to having it restated in the rules, or if it is something that does not need to be repeated.

**Chairman Siddoway** asked **Mr. Wallace** if the new Rule 140.02 covered the findings of fact and conclusions of law concerns. **Mr. Wallace** replied that rule is different in that some cases involving legal issues, the parties have an opportunity to write up a legal argument that can be given to the Board so they can have a really good understanding of the arguments, because in the course of the hearing it is sometimes difficult to say things in the best way.

**Chairman Siddoway** asked about the rule relating to the Power of the Board, Rule 12.02. He pointed to the last sentence that is stricken that says, "The chairman will not issue substantive orders in any case, except upon a roll call vote." **Chairman Siddoway** asked if that means the chairman can now make substantive decisions without the consent of the Board. **Mr. Wallace** answered that it is not permitted for a chairman to decide a case or dispose of a case. There is a two signature requirement such that at least two members concur on the final decision. **Chairman Siddoway** asked for clarification that indeed the chairman does not have single authority. **Mr. Wallace** said that yes, that is covered in the enacted statutes.

**Chairman Siddoway** commented that he also made the same notes as **Senator Hill** and **Senator Werk** about electronic filing provision as it seems that is the way business is done these days and he suggested the Board look into that. **Mr. Wallace** replied they most certainly will.

**PASSING OF  
GAVEL:**

As there was no further participants desiring to testify, **Vice Chairman Rice** returned the gavel to **Chairman Siddoway**. **Chairman Siddoway** stated the Committee will vote on these pending rules at the meeting on January 29. He reminded the Committee of the Idaho State Tax Commission's event, "Tax 101" scheduled for Wednesday and Thursday from 3:00 p.m. to 5:00 p.m. in the West Auditorium.

**Senator Hill** commended **Mr. Wallace** and his staff for their efforts in preparing these rules. He said he has looked at a lot of rules in his time, and their work to make them more succinct and clear is a good example for the rest of the rules. **Chairman Siddoway** said he would echo that statement.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 3:38 until Tuesday, January 22 at 3:00 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, January 22, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES:	Minutes of January 10, 2013	<b>Senator Johnson</b>
	Minutes of January 15, 2013	<b>Senator Vick</b>
RULES REVIEW		
IDAPA 36 <a href="#">36-0101-1201</a>	Pending Rules relating to the Idaho Board of Tax Appeals	<b>Steve Wallace</b> , Idaho Board of Tax Appeals
IDAPA 35 <a href="#">35-0101-1201</a>	Idaho State Tax Commission Income Tax Administrative Rules	<b>Cynthia Adrian</b> , Idaho State Tax Commission
<a href="#">35-0101-1202</a>	Income Tax Administrative Rules	<b>Cynthia Adrian</b>
<a href="#">35-0201-1201</a>	Administrative and Enforcement Rules	<b>Cynthia Adrian</b>
<a href="#">35-0102-1201</a>	Sales Tax Administrative Rules	<b>McLean Russell</b> , Idaho State Tax Commission
<a href="#">35-0109-1201</a>	Table and Kitchen Wine Tax Administrative Rules	<b>McLean Russell</b>
<a href="#">35-0110-1201</a>	Idaho Cigarette and Tobacco Products Administrative Rules	<b>McLean Russell</b>
<a href="#">35-0112-1201</a>	Idaho Beer Tax Administrative Rules	<b>McLean Russell</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, January 22, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk, and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:00 p.m.

**MINUTES:** **Senator Johnson** moved, seconded by **Senator Lacey**, to approve the minutes from the January 10, 2013 meeting. The motion carried by **voice vote**.

**Senator Vick** moved, seconded by **Senator Werk**, to approve the minutes from January 15, 2013 meeting. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Siddoway passed the gavel to Vice Chairman Rice for the consideration of Pending Rules.

**DOCKET NO. 36-0101-1201** **Vice Chairman Rice** invited to the podium Steve Wallace, Director for the Idaho Board of Tax Appeals (Board), for further review of rules relating to the Idaho Board of Tax Appeals.

**Mr. Wallace** said that due to the requirements in rule promulgating, in order to retain struck language in a pending rule, the entire subsection must be rejected. Therefore, he proposed that in **Docket No. 36-0101-1201**, Rule 63, Rule 65 and Rule 140.06 be retained in the original language and addressed at a future time if necessary or prudent.

Rule 63 relates to Amendments to Pleadings. **Mr. Wallace** indicated that the rule has some meaty content about the liberal construction standard, and while it does not come up very often, when it does, this rule could be important to the parties and the Board, and even to the courts, in future proceedings.

Rule 65 relates to the Computation of Time. **Mr. Wallace** said it is a counting rule in which the language could cause some confusion or disagreement in how periods of time are counted, and the words "of the act, event or default" could be beneficial in the future.

Rule 140.06 (previously 140.07) relates to Decisions of the Board and the direction to require findings of fact and conclusions of law. **Mr. Wallace** said the Board had thought this would be extraneous or nonessential language because it is contained within the Administrative Procedures Act; however, it was decided that it could be beneficial to have this requirement in procedural rules, too.

**Mr. Wallace** expressed his appreciation to the Committee members for their efforts to improve the rules, noting that even with these few additions, the rules have been significantly simplified. **Senator Vick** asked for clarification on what was being removed from Rule 65. **Mr. Wallace** said that in order to retain even a part of the language, changes to the entire section must be rejected.

**MOTION:**

**Senator Vick** moved, seconded by **Chairman Siddoway**, to approve **Docket No. 36-0101-1201**, with the exception of Rule 63, Rule 65 and Rule 140.06 to remain in the rules as written. Motion carried by **voice vote**.

**DOCKET NO.  
35-0101-1201**

**Vice Chairman Rice** invited to the podium Cynthia Adrian, Income Tax Committee Chair for the Idaho State Tax Commission (Commission), to present information relating to IDAPA 35.

**Ms. Adrian** said this section of Income Tax Administrative Rules is the negotiated rulemaking docket. Rule 600 and Rule 700 were initially intended to undergo changes, but due to time constraints, they decided not to promulgate them and the rules will remain as codified.

Rule 130 is amended consistent with H 364 to clarify the treatment of pensions received by certain retired police officers and firefighters. The definition of disability is changed to a more clear definition as found in Idaho Code.

Rule 140 is amended consistent with H 485 to revise the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences. It was formerly called Insulation of an Idaho Residence. There is now a definition for what qualifies as an Energy Efficiency Upgrade Measure. **Ms. Adrian** said the big change is allowing more homes to qualify by changing the eligibility date from January 1, 1976 to January 1, 2002.

Rule 171 is changed to clarify what constitutes non-qualifying property for the Idaho capital gains deduction. She said the non-qualifying property items were scattered throughout the rule, so this change brings it all under Subsection 5.

**Senator Hill** asked about an additional item added to the list that was not crossed out elsewhere in the changes. He said it is titled "Interests in a Partnership, LLC or S Corporation" and asked why that was added. **Ms. Adrian** answered she believes what the Commission is trying to indicate is that interest in a partnership is not tangible property. The capital gains deduction defines tangible personal property, so this rule describes Interest in a Partnership, LLC or S Corporation as intangible.

Rule 290 and Rule 291 are amended consistent with H 582 to revise the options of pass-through entities. The pass-through entity may file a composite return for nonresidents and pay the tax due, or the entity can do backup withholding under Idaho Code § 63-3036B. **Ms. Adrian** said with passage of H 582, there is no longer an election to make because the option is no longer valid. Therefore, the language needed to be changed to take out the word "election." Rule 291 also needed to have the reference to "election" removed.

Rule 714 is changed to clarify the current practice of applying Idaho investment tax credit limitations first to mobile property then to used property. There are also examples in Subsection 4 to give further understanding of how this rule works.

**Ms. Adrian** said these changes came from a recommendation during negotiated rulemaking.

Rule 877 relates to backup withholding by pass-through entities. **Ms. Adrian** explained the rule removed the reference to making an election and added the "Idaho Nonresident Agreement," which was recommended in negotiated rulemaking. She said practitioners came in and looked at the legislation that offered two options: have backup withholding done or be part of a composite return. It did not give an option for those nonresidents who have been historically filing Idaho tax returns to go ahead and do that. The Commission researched legislation and asked the Attorney General's Office to look at it. The Attorney General's Office said the option would not be available unless prescribed in a rule. Therefore, the Commission is adding the Idaho Nonresident Agreement to this rule.

**Ms. Adrian** said Rule 877 provides that the nonresident would sign the Agreement and agree to file their return and give it to the pass-through entity. The pass-through entity would need to approve it as well before it is valid. If the pass through entity approves it, the nonresident can go ahead and file. If the pass-through entity does not approve it, the taxpayer would need to do backup withholding or be part of a composite return.

**Vice Chairman Rice** asked if anyone would like to testify on this docket. **John McGown** approached the podium and introduced himself as a tax attorney with Hawley-Troxell Law Firm and he is here representing himself as a concerned taxpayer. He shared that he taught the first graduate course on taxation in Idaho. He was the Idaho correspondent for the Tax News national publication for sixteen years, so he feels qualified to speak on Idaho Taxes. **Mr. McGown** said his main concern is the retroactivity of the rules being considered by the Committee.

He said the Tax Commission adopts rules in two circumstances: first, legislation recently enacted that needs to be interpreted or second, a statute that has been on the books for a number of years that needs to be interpreted. **Mr. McGown** said it is the latter that causes him concern. He offered this example: If I file a return for 2009, it is due April 15, 2010. I filed it based on the information I had of rules and statute in place. Then, the Tax Commission can then issue a rule in 2012 interpreting the statute that I relied on in filing my return in 2010. **Mr. McGown** continued that he understands the Tax Commission's view to be that he should know what rules would be enacted down the road. **Mr. McGown** said that is of concern to him: how is he supposed to know when he files a tax return that the rules are going to be issued later and then are retroactive to the tax return he already filed.

**Mr. McGown** shared a handout (See Attachment #1) with the Committee that posed this question in an email: "Am I correct that the Idaho State Tax Commission believes that taxpayers should know when they file their tax returns that the statutes they are relying on might be interpreted by the Idaho State Tax Commission in later years (via Rule) and that the taxpayer needs to anticipate what such interpretations might be because such interpretations are retroactive? If I am correct, do you agree that it could be reasonably viewed as overreaching?" **Mr. McGown** showed the Tax Commission's answer in the email, which he summarized by saying the Tax Commission says it 'can' go retroactively and it is 'not' overreaching. **Mr. McGown** said he has the utmost respect for Chelsea Kidney and Phil Skinner of the Attorney General's Office for doing their job and this presentation is not a criticism of them. Instead, it is an effort to point out to the community that when rules are adopted, the Tax Commission will view them as retroactive.

**Senator Hill** asked Mr. McGown if he is referring to the entire docket of rules or to something specific. **Mr. McGown** said he is referring conceptually to the whole docket. He said he's not picking out any particular rule, but his view as a concerned taxpayer is that anytime rules are adopted the Tax Commission will say they are retroactive. His concern is a statute that has already been in place is then interpreted some years later and the taxpayer is expected to know what that later interpretation might be. **Senator Hill** asked Mr. McGown if there is wording in the docket that automatically makes the rules retroactive or if he is saying once rules are established that they should not be fine tuned. **Mr. McGown** quoted from Idaho Income Tax Rule 35.01.01.001.03 relating to the Effective Date of Rules, which says, "Effective Date. To the extent allowed by statute, rules in this chapter will be applied on their effective date to all taxable years open for determining tax liability."

**Mr. McGown** repeated his example about filing a 2009 tax return in 2010 which will remain open until 2013, and how he believes the Tax Commission is saying the Commission might use a rule that is going to change the interpretation of the statute, when that return was prepared under a different understanding of the rule.

**Mr. McGown** stated his second concern is the method by which the Tax Commission accomplishes its view of retroactivity. He cited Idaho Code § 67-5244(5)(a): "A rule which is final and effective may be applied retroactively as provided in the rule."

**Mr. McGown** said the Tax Commission takes a different approach by adding a separate rule that says all their rules are retroactive. He said he questions whether that concept may be subject to legal attack and it may be important from a policy standpoint. He said he thinks each rule should be looked at individually to see if it should be retroactive, but instead the Tax Commission takes a blanket approach of making the entire rule book retroactive.

**Chairman Siddoway** asked Mr. McGown if Mr. McGown had ever been caught in that freefall. **Mr. McGown** replied he has had those issues.

**Mr. McGown** said he believes it is overreaching for the Tax Commission to ask taxpayers to guess what the Tax Commission is going to do in the future and he'd like to come up with a solution. He suggested the process of retroactivity should be done individually by rule, and not by blanket approach that everything is retroactive. His recommendation is that if these rules are adopted, it be done with the caveat that they are not to be applied retroactively.

**Senator McKenzie** asked if what Mr. McGown is suggesting could create unintended consequences. **Senator McKenzie** said looking at each rule individually to determine if it is retroactive could create a situation whereby two different tax applications could be applied to similar assets or income at the same time. **Senator McKenzie** said it seems there should be a uniform guiding principle for all the rules.

**Mr. McGown** said he has found the rule applies to essentially all open tax returns. There could be a situation where a taxpayer filed their 2008 return which then goes under audit and the Commission extended the statutes to the open return where someone else's returns are closed. Some taxpayers could be affected while others are not. **Mr. McGown** said he wants the rules to be effective post-actively and not retroactively, saying that would be more fair than the current situation.

**Vice Chairman Rice** invited Ms. Adrian back to the podium at the request of Senator Hill. **Senator Hill** asked her for clarification on the effective date of Rule 1.03. **Ms. Adrian** said it was approved February 2012 because there was one part of the rule that was not approved, so it was approved by concurrent resolution. That is why it does not have the effective date it would normally have.

**Senator McKenzie** said Mr. McGown's comments resonated with him, in that it seems a taxpayer should know what rules apply to their return when they apply them. He said he understands the need for uniformity and a standard application for the Commission people who review those returns. He asked Ms. Adrian to remind the Committee of the policy on using this particular definition of effective date, rather than having it in post-active only.

**Ms. Adrian** said she believes it is something she will have to look into. She said she would, of course, agree with the Tax Commission's treatment of this issue. She said one thing the Commission needs to think about is people who file amended returns.

**MOTION:**

**Chairman Siddoway** moved, seconded by **Senator Lacey** to approve **Docket No. 35-0101-1201**. During discussion, **Senator McKenzie** stated he will support the motion, but he is concerned about the issue of the Effective Date. He said it seems the issue deals with a particular rule approved last year and it would be prudent to clarify the issue for anyone who is looking to the rules for guidance. He requested the Tax Commission consider the definition of Effective Date and make it clear for both their staff and taxpayers. Upon no further discussion, the motion carried by **voice vote**.

**Vice Chairman Rice** invited Ms. Adrian back to the podium. **Ms. Adrian** said this docket includes non-negotiated Income Tax Administrative Rules of simple nature that comply with statutory changes. She went on to describe each rule below:

Rule 75 is amended to conform to Idaho Code § 63-3024 and adds tax brackets for calendar year 2012 and removes the information for calendar year 2007 so only five years of historical data is retained in the rule.

Rule 105 makes adjustments for taxable income pursuant to the passage of H 363. It conforms to Idaho Code § 63-3022(i) to provide that passive losses incurred in years during which a taxpayer had no activity in Idaho are not deductible. This change treats passive losses in a manner identical to the treatment of net operating losses and capital losses.

Rule 108 relates to teacher expenses pursuant to the passage of H 517. It conforms to Idaho Code § 63-3022O which removes the prohibition allowing the deduction of classroom supplies and other expenses not to exceed \$250 of elementary and secondary teachers otherwise allowable under Section 62(a)(2)(D).

Rule 121 relates to energy upgrade measures consistent with the passage of H 485. It conforms to Idaho Code § 63-3022B by revising the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 253 also deals with educator expenses and adds the date and leaves the rest in place for historical purposes.

Rule 285 conforms to Idaho Code § 63-3022L and § 63-3036B pursuant to the passage of H 582. It revises the provisions relating to the taxation of income of owners with an interest in a pass-through entity and regarding backup withholding for pass-through entities. It takes out the words "election under" and adds "requirement of."

Rule 286 is amended to clarify the allocation and apportionment procedures used when an S Corporation and its Qualified Subchapter S Subsidiaries (QSSS) are carrying on more than one unitary business. This rule clarifies the current practice.

**Chairman Siddoway** asked if a Sub S can own Sub S stock in Idaho. **Ms. Adrian** replied that she believes it can, but she'd have to look into that. **Senator Hill** said he'd have to check, as it would not be state law but rather Internal Revenue Service law. **Senator Hill** said S Corporations are very restrictive on who their stockholders can be and he said he does not believe an S Corporation can own an S Corporation.

Rule 710 relates to the Idaho investment tax credit. During negotiated rulemaking, one of the practitioners suggested moving the rule from Rule 719 into Rule 710. The amendment clarifies the order of limitations for the Idaho investment tax credit. When a taxpayer has both mobile and used property that qualifies for the Idaho investment tax credit, the eligible amount is first determined under the mobile property rules and then the used property limitation is applied.

**Senator Hill** clarified his statement to Chairman Siddoway that no corporation can own stock in an S Corporation.

Rules 745, 746, 747 and 748 conform to Idaho Code § 63-3029E and § 63-3029EE which corrects an oversight from the Hire One Act of 2011 by allowing companies to receive the new jobs tax credit up until the start of the Hire One Act and has a sunset date of January 1, 2017.

It was written that employers could receive the credit for employees hired as of April 15, 2011. When these rules and the legislation that surrounded these rules went away with the Hire One Act, employers were left without the credit from January 1 through April 15. This new rule fixes that oversight.

Rule 711 relates to Grocery Credits. Every year, the Tax Commission adds \$10 to the credit until it reaches \$100 for each section. The rule conforms to Idaho Code § 63-3024A which sets the amounts of the grocery credit for 2008 and provides for an increase in the amounts for subsequent years. These increases are automatic unless certain actions as provided in Idaho Code are taken by the Legislature or the Governor.

Rule 810 is amended pursuant to H 653 which relates to filing dates for the Idaho State Tax Commission. It conforms to Idaho Code § 63-217 by providing that if the date for filing any report, claim, tax return, statement or other document or making any such payment falls upon Saturday, Sunday, legal holiday or other holiday recognized by the Internal Revenue Service, such acts shall be considered timely if performed on the next day. **Ms. Adrian** said if the IRS recognizes a day as a holiday, the Idaho State Tax Commission will, too.

**Senator Johnson** asked about calculations used in the tax brackets. He said **Ms. Adrian** noted the tax brackets are adjusted for inflation and he'd like to know which index is used to do that. **Ms. Adrian** replied the Commission uses the Consumer Price Index, and it says in statute exactly which one to use. **Senator Johnson** said he'd like to receive a copy of that because he has not been able to find it as there are thousands of indices out there.

**Senator Johnson** referred to a table and gave an example. He said in Table E for taxable year beginning 2012, if one makes at least \$1 but less than \$1380, there is a tax amount. Then looking back at Table D for 2011 on the same line, the figure is \$1338. **Senator Johnson** asked if he were to take \$1380 and subtract \$1338 and divide by that lower number, that would give the percentage of inflation. **Ms. Adrian** said she believes that is correct. **Senator Johnson** followed up by asking if he took that percentage, he should be able to go to an index table referenced in statute and those numbers should match, except for maybe some rounding to hundredths or thousandths of points. **Ms. Adrian** said she believes that is correct.

**Senator Johnson** said when looking at the tables for each year where it says "Tax and bracket amounts were calculated using consumer price index amounts published on" such and such date, the tables all have different dates. One has May 17, another March 12, and another April 28, then May 4, and May 24 and April 13. **Senator Johnson** said it is his understanding that the indices change from month to month depending on which index being used and may or may not be a lot of change. He asked why does that date vary from year to year and why isn't there a typical date as in a contract, from where to pull those numbers. **Ms. Adrian** said she believes it goes back to the fact that the Commission has a specific index they have to use and it may not be published on the same date every year, so they have to wait until that index is published before they can use it.

**Senator Johnson** commented that he has had experience using a "chain index" that accounts for substitutions and has been considered by the Federal Government as an index to tally social security and other benefits. **Senator Johnson** said the chain index is a more stable index, so it works for long-term considerations. He said he thinks it is a more stable index and he has used it in contracts and saved a lot of money.

He said if an index is chosen to change the tax brackets and it's not known what is trying to be measured or captured, that potentially a lot of money could be given away by raising the brackets too high. If one is truly trying to measure the cost of living index and how prices are moving, it may vary by the price of a loaf of bread or a gallon of milk. **Senator Johnson** said he has asked the Tax Commission before and is asking again for a clear identifier on which index the Tax Commission uses so he can go back through the tables and check the numbers for himself to see if there is some validity to pursuing something such as a chain index.

He said in effect that could leave more dollars in the State bank account, though he said some people may see it as taking money away from them. He said when trying to measure the cost of living, a chain index may be more appropriate, and there is a precedent on the national level for it. **Senator Johnson** said he is interested in an identifying number since he has not found in the statute and would also like a response on the information being pulled on different dates. **Ms. Adrian** replied she would be happy to get that information to Senator Johnson.

**Senator Hill** said Idaho Code § 63-3024 is the statute Senator Johnson may reference regarding the Consumer Price Index and adjusting the brackets for the calendar year. He said the Tax Commission is stuck with the consumer price index, though he's not sure why they have different dates a few weeks off from one year to the next.

**MOTION:** **Senator Hill** moved, seconded by **Chairman Siddoway** to approve **Docket No. 35-0101-1202**. Motion carried by **voice vote**.

**DOCKET NO. 35-0201-1201** **Ms. Adrian** said this docket has the Tax Commission Administrative and Enforcement Rules.

Rule 225 is amended to be consistent with Rule 140, which relates to when taxpayers make payments, the amount will go toward interest first, then the tax, and then the penalty.

Rule 310 is amended to add the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be found. There is a formula in statute that tells the Commission how to do this calculation.

Rule 500 is modified to conform to Idaho Code § 63-3047 which outlines the order to be "taxes, penalties or interest."

Rule 704 relates to Disclosure Rules and is amended to conform to statute allowing the exchange of information to Treasurers Office and Idaho Transportation Department (IDT), pursuant to H 687. The unclaimed property program is run by the Treasurers Office and can get taxpayer identifying numbers and addresses from the Tax Commission. A second change relates to the tax declaration for blindness. IDT requires the Tax Commission disclose to them anyone who receives a benefit or exemption for blindness.

**MOTION:** **Chairman Siddoway**, seconded by **Senator McKenzie**, to approve **Docket No. 35-0201-1201**. Motion carried by **voice vote**.

**Vice Chairman Rice** invited to the podium McLean Russell, Sales Tax Committee Chair for the Idaho State Tax Commission, to present information relating to IDAPA 35.

**DOCKET NO. 35-0102-1201** **Mr. Russell** outlined the Sales Tax Administrative Rules. Rule 24 is amended to clarify that a rental of tangible personal property with an operator provided by the equipment owner will be treated as a fully operated rental regardless of whether the hired operator is an employee of the equipment owner. **Mr. Russell** said many years ago the Commission drew a bright line between a rental and a service for what the buyer is receiving. If the rental is just a piece of equipment, it was tangible. If the buyer received an operator and equipment, it was a nontaxable service. When the rule was written, most of the time the operator was an employee of the equipment owner. These days, that is not always the case. This rule allows that if an operator is provided with the equipment, it will be treated as a nontaxable service, regardless of where the operator came from.

Rule 37 is amended to clarify the exemption for the sale, lease, purchase and use of aircraft primarily utilized in transporting freight or passengers, including the definition of important terms such as "common carrier" and "public." This rule is also amended to reflect statutory changes enacted by the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident. **Mr. Russell** said under the sales and use tax, the purchase and use of anything is almost always all taxable or all not taxable, usually not anything in between. The Commission considered the use of the words "primarily used" that gives some leeway. The aircraft can be used for a nonexempt purpose some of the time as long as the primary use is for the exemption.

**Mr. Russell** said the most effective method to track how an aircraft is used is by looking at flight hours to see who is actually hiring the aircraft. This rule addresses who is really a member of the "public" and when is the aircraft being used as a "common carrier" as defined in Subsection h. **Mr. Russell** said this was necessary because sometimes people purchase an aircraft and hire a management company to operate, store and take care of the aircraft, such that when the owner of the aircraft is not using it, it is hired out. If that aircraft is hired out by the management company 75 percent of the time, the exemption is allowed. However, if aircraft owners, their family or employees or other nonpublic entities are using the aircraft 75 percent of the time, the exemption is not allowed and the aircraft would be subject to sales and use tax. Subsection 3 gives a new exemption for when an aircraft is repaired in Idaho, the sales of those repair parts will not be subject to sales and use tax, as long as the aircraft is owned by a nonresident. This Subsection defines nonresident.

**Mr. Russell** described Rule 43, which is amended to clarify whether certain fees or charges added onto the sale of tangible personal property, such as fuel surcharges or environmental fees, should be included in the taxable sales price.

Rule 44 is amended to define the term "trade down," which occurs when merchandise is traded in on the purchase of other merchandise. **Mr. Russell** explained the most common occasion is with a new car, where the value of the used car reduces how much sales tax is paid on the new vehicle. This rule provides that if a new car is worth less than the car being traded in, there will be zero sales tax owed.

Rule 72 is amended to clarify the taxability of tangible personal property removed from inventory held for resale. **Mr. Russell** said commonly a retailer will acquire inventory for resale, and they do not have to pay sales tax when they acquire it because they will resale it and charge sales tax at that time. In some cases, if they use their inventory for another purpose, they will have to pay use tax on it. For example, Jerry's Cleaning Supplies might pull some cleaning supplies off the shelf to clean their store, they will owe Use Tax on those cleaning supplies.

Rule 95 relates to the exemption for the purchase of "money operated dispensing equipment." **Mr. Russell** said when purchasing any machine used to dispense a product, such as an arcade game, the machine itself is not taxable, as long as it is operated by money. These days, there are more machines operated by credit or debit cards, which are considered cash equivalents. This rule makes sure those pieces of equipment are treated in the same manner as cash operated machines.

Rule 101 relates to trucks used for interstate commerce. This rule is amended to reflect statutory changes enacted in the last legislative session that changed the period for reviewing ongoing International Registration Plan (IRP) use tax exemptions. That period of review is now set for July 1 to June 30.



**Mr. Russell** explained when a truck purchased for interstate commerce is used outside of Idaho at least ten percent of the time during that period, the owner will not have to pay sales and use tax, and can continue to qualify for that exemption as long as every year, ten percent of the mileage is outside of Idaho.

Rule 109 relates to amusement devices like arcade machines or coin machines at stores that do not dispense a product. **Mr. Russell** described the system for paying sales tax on the quarters people put in those machines. Instead of calculating all the machine's sales for the year, the operator applies for a yearly sticker to put on the machine and the fee they pay covers the sales tax on that machine for the year. Subsection 1 adds that amusement devices now include not only coin, currency and token operated machines but also debit or credit card operated machines, as well as "arcade cards" that are the modern version of arcade tokens. The money on an arcade card is only for that establishment.

Rule 128 relates to what a sellers permit number looks like. The rule is amended to make minor technical corrections to bring the rule in line with current policy and procedure regarding exemption certificates. **Mr. Russell** explained anyone who makes sales has to collect sales tax and needs a permit. It was a nine digit number, but that system has changed over the years and now sellers have to have several different types of numbers for different purposes. To clarify policies, the rule describes what is needed to get a current and valid Idaho sellers permit number, including providing a federally issued Employer Identification Number (EIN) if they have one. If the permit purchaser does not have an EIN, they must provide the purchaser's driver's license number and state of issue.

**Senator Hill** asked for clarification in Rule 72 on how the Tax Commission defines "value" when it comes to a retailer pulling an inventory product from the shelf for personal use. He asked if it is the price an item sells for or the price paid for it. **Mr. Russell** said it is set by statute, that the value of property is presumed to be the recent sales price as available, and if it's not available, then use the fair market value as an estimate. **Senator Hill** asked why is it recent sales price and not recent purchase price. **Mr. Russell** said sales price is what is written in statute as a defined term. In the rule, there is a statement that says sales price and purchase price are interchangeable, but in statute, sales price is a defined term for sales tax purposes. **Senator Hill** asked what is in the statute, value or sales price. **Mr. Russell** answered Use Tax is on the value of the property, which is presumed to be a recent sales price, so they are both in statute.

**Senator Hill** gave an example of going to Krispy Kreme and getting a free donut. It says on the board the price is 96 cents. It didn't cost them 96 cents to make the donut, but that's what they sell it for. So for the free donut he got, they have to pay Use Tax on 96 cents. **Senator Hill** asked Mr. Russell if that was his understanding. **Mr. Russell** said he does not know specifically how Krispy Kreme works, so he went back to the example of the generic cleaning supply store. **Mr. Russell** said "they would look at their own cost, what they paid for it, that was the sales price for them, their purchase price, their sales price." **Mr. Russell** said the sales price to the store is their purchase price and that is what they will pay tax on.

**Senator Hill** said he agrees with Mr. Russell, but he's not sure all the agents at the Tax Commission understand that. **Senator Hill** said he thinks the statute needs to be clarified, because if it just says value, that would be the price the wholesaler paid for it. It's their cost, not what they sell it to customers for. **Mr. Russell** said that is correct.

**MOTION:**

**Senator Werk** moved, seconded by **Senator Bayer**, to approve **Docket No. 35-0102-1201**. Motion carried by **voice vote**.

**DOCKET NO.  
35-0109-1201**

**Mr. Russell** outlined the Table and Kitchen Wine Tax Administrative Rules. He noted the substance of the changes of this Wine Tax docket and the changes in the Cigarette and Tobacco Tax and Beer Tax dockets are identical. **Mr. Russell** said those who need to pay Wine Tax (or Cigarette and Tobacco Products Tax or Beer Tax) almost always have to have a bond, some sort of security with the Idaho State Tax Commission that sets forth how much they'll pay if they default in the payment of that tax. The change in this rule is to bring conformity with what is already being done regarding the types of security the Tax Commission will accept. The rule has a thorough list of what is acceptable.

**Mr. Russell** also described that the Tax Commission used to require reports from out-of-state distributors, but that has not been in practice for a long time, so that requirement is removed from the rule.

**MOTION:** **Senator Lacey** moved, seconded by **Senator Vick**, to approve **Docket No. 35-0109-1201**. Motion carried by **voice vote**.

**DOCKET NO.  
35-0110-1201**

**Mr. Russell** outlined the Idaho Cigarette and Tobacco Products Administrative Rules, which provide a list of what is acceptable security for tax required from wholesalers of cigarette and tobacco products.

**MOTION:** **Senator Lacey** moved, seconded by **Senator Werk**, to approve **Docket No. 35-0110-1201**. Motion carried by **voice vote**.

**DOCKET NO.  
35-0112-1201**

**Mr. Russell** outlined the Idaho Beer Tax Administrative Rules, which provide a list of what is acceptable security for tax required from wholesalers of beer sales.

**MOTION:** **Senator Lacey** moved, seconded by **Chairman Siddoway**, to approve **Docket No. 35-0112-1201**. Motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Rice passed the gavel back to Chairman Siddoway.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:29 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Wednesday, January 23, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H1</u></a>	Relating to income taxes to update references to the Internal Revenue Code (IRC)	<b>Mike Chakarun</b> , Idaho State Tax Commission
RULES REVIEW		
IDAPA 35	Idaho State Tax Commission	
<a href="#"><u>35-0103-1202</u></a>	Property Tax Administrative Rules	<b>Alan Dornfest</b> , Idaho State Tax Commission
<a href="#"><u>35-0103-1203</u></a>	Property Tax Administrative Rules	<b>Alan Dornfest</b>
<a href="#"><u>35-0103-1204</u></a>	Property Tax Administrative Rules	<b>Alan Dornfest</b>
<a href="#"><u>35-0103-1205</u></a>	Property Tax Administrative Rules	<b>Alan Dornfest</b>
<a href="#"><u>35-0103-1207</u></a>	Property Tax Administrative Rules	<b>Alan Dornfest</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Wednesday, January 23, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:00 p.m.

**H 1** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager for the Idaho State Tax Commission (Commission), to the podium to describe **H 1**, relating to income taxes and updating references to the Internal Revenue Code (IRC).

**Mr. Chakarun** said **H 1** is the annual bill to conform the Idaho Income Tax to the IRC that went into effect on January 1, 2013. This bill does have a negative fiscal effect this year of \$6 million on the general fund because of HR 8, the fiscal cliff bill that passed the United States Congress on January 1, 2013. HR 8 extended Section 179 expensing election at the \$500,000 level for tangible personal property used in a trade or business and the investment limitation at \$2 million through 2013. The maximum amount of the deduction was scheduled to drop to \$139,000 in 2012 and down to \$25,000 in 2013. Had the levels not been scheduled to drop in 2012 or 2013, and remained at \$500,000, the fiscal effect would be zero.

**Mr. Chakarun** said because future investment levels and utilization of the deduction cannot be estimated with any degree of precision, the fiscal effect is a fixed number set between an estimate range, somewhere between \$4 million and \$8 million. The Tax Commission split it down the middle and estimates about \$6 million. Part of the reason for that is the Commission doesn't know the level of investment that could occur, how many people will claim the Section 179 election, or what the income limitations will be, so \$6 million was the best guess.

When taxpayers claim a Section 179 deduction, they create a timing difference. Because a taxpayer can 'expense' all or part of an asset in the year of purchase, they cannot depreciate that asset over its tax life and this creates a higher tax bill in subsequent years, all else being equal. Likewise, the \$6 million negative effect in 2013 will reverse itself over the lives of those assets through foregone depreciation.

**Mr. Chakarun** said the Commission review of the other provisions of HR 8 did not indicate there would be other fiscal effects on the general fund.

Concern was raised about changing the effective date of **H 1** because the HR 8 legislation passed on January 1 and the President signed it on January 2. The concern was the timing difference may cause an effective date difference for Idaho. However, he said, the Commission looked at it and concluded that even though the bill was signed after the start of the year, the underlying provisions in HR 8 all have effective dates either on December 31, 2012 or they take effect in the future, so the Commission feels comfortable that it's not an issue.

**Mr. Chakarun** said there is one small thing that is different in this year's conformity bill. After the legislature passed the conformity bill last year, Congress passed a bill late in March and amended the Federal Aviation Modernization Reform Act. A small provision in it allows employees of bankrupt airlines who receive distributions from those airlines to roll those funds into IRA's and claim a deduction for those contributions even if those returns were out of statute. Since the federal conformity bill does not address the Idaho statute of limitations, this provision would allow those taxpayers to file an out of statute refund but they are only given until April 15, 2013 to do that. It only affects a handful of Idaho taxpayers with a very negligible fiscal effect, as it is part of the \$6 million figure. He said it is more of a fairness issue at this point. **Mr. Chakarun** asked the Committee to approve the bill with a do pass recommendation.

**Senator Hill** said it is unfortunate because the budget amount that the Joint Finance Appropriations Committee (JFAC) works towards, and what the economic outlook is that JFAC has to look at, is based on the way the law is at that moment in time. He said all this does is extend the provisions that Idaho has already had, but federal government also extended them, and Idaho waited to see what they would do, and Idaho has adopted them. It's just an extension of the Section 179 deduction and other things that Idaho has already been following the past few years. Unfortunately, now JFAC has to take that \$6 million amount and subtract it from what they were budgeting. **Senator Hill** said, "If we could ever get to the point of rolling conformity so we could assume we were going to conform, and then these numbers would already be in the budget, and we wouldn't have to short the budget by \$6 million, for a clerical purpose in my mind." **Mr. Chakarun** said that is correct.

**MOTION:**

**Senator Hill** moved that **H 1** be sent to the floor with a do pass recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

Chairman Siddoway passed the gavel to Vice Chairman Rice for the review of the pending rules.

**Vice Chairman Rice** introduced Alan Dornfest, Property Tax Policy Supervisor with the Idaho State Tax Commission (Commission), to present the pending rules for review relating to IDAPA 35.

**DOCKET NO.  
35-0103-1202**

**Mr. Dornfest** approached the podium to review the Property Tax Administrative Rules in **Docket No. 35-0103-1202**. He said there are two rules, Rule 605 and Rule 620, listed in the descriptive summary that were subject of a hearing by the Commission in November 2012. After the hearing, The Commission decided it did not have enough to go on in statute and could not provide sufficient clarification for Rule 620 and therefore withdrew it.

Rule 605 is a new rule that clarifies part of the exemption that exists for either real or personal property used for nonprofit educational purposes. **Mr. Dornfest** said some issues arose after discussions with county assessors who work to implement all these sections of law. He gave an example of a strip mall that is not owned by a school but has a nonprofit charter school as one of the lessees. Because the education exemption for property taxes is written in such a way as to be contingent upon exclusive use, the legal staff felt to give that meaning, that portion of the mall used for the school would qualify for the exemption. **Mr. Dornfest** gave another example for the personal property exemption as it relates to computers used by children at schools. He said the school district may own the computers or they may be privately owned and leased to the schools. The Commission felt there needed to be a clearer test because the law requires exclusive use to receive the exemption. Rule 605 spells out a procedure in which the owner can make application and get proof from the lessee that the computers are to be used exclusively at a nonprofit school or charter school or that its use is constrained in such a way that it can

only be used for educational purposes. For example a student could not take the computer home.

**Mr. Dornfest** said the Commission held a hearing on this rule in November 2012 because the Commission had received an objection by the Ada County legal staff regarding the Commission's interpretation of "exclusive use." Ada County felt it could be argued that in the case of the strip mall, the use of the property was to make money for the owner of the strip mall. However, the Commission's legal staff felt strongly in reviewing the statutes and the history of the statutes showing how uses had been added to what originally had been statutorily constrained. **Mr. Dornfest** said to make meaning of the rule, it would have to be use and abuse, not that it was generating income for someone else. The Commission's legal staff sent a written opinion to the Ada County legal staff, and Ada County did not appear at the hearing. **Mr. Dornfest** said it is his belief that Ada County does not have any objection to this rule. He said there were no other objections filed either.

**Vice Chairman Rice** said he can think of a couple different ways to interpret "exclusive use" that would still leave a charitable use for a strip mall. He asked, for example if a piece of real property is owned by one charity and they use it only for educational purposes, would that be given an exemption. **Mr. Dornfest** said it would depend on which exemption Vice Chairman Rice would be seeking, because there are two different exemptions. The charitable exemption requires ownership by the charitable corporation. The education exemption does not require ownership because it has different sections in statute. **Mr. Dornfest** said the Commission looked at the history of the statute regarding the education exemption, and it originally did not require anything about use, it only hinged on ownership. In review of the statutes, **Mr. Dornfest** said, this rule is now the interpretation.

**Vice Chairman Rice** asked if there has been a situation where the Commission was taxing computers that a company donated the use of those computers to the school. **Mr. Dornfest** said he is not aware of any such situation.

**MOTION:**

**Chairman Siddoway** moved to approve **Docket No. 35-0103-1202**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
35-0103-1203**

**Mr. Dornfest** reviewed **Docket No. 35-0103-1203**, beginning with Rule 131, which he said updates a section on the use of ratio values, which are statistical studies used to make sure counties are appropriately assessing property at market value. Rule 131 is amended to give guidance to county assessors on how to handle foreclosure sales. This proposed change adopts the International Association of Assessing Officer's (IAAO) "Standard on Verification and Adjustment of Sales." **Mr. Dornfest** said in the last couple of years, the IAAO has addressed a situation of great concern to Idaho. **Mr. Dornfest** said the studies are based on samples of sales from each community and each county around the state. The issue of what constitutes a valid sale, a valid arms length transaction, has been a serious question in the past few years considering the amount of foreclosure related sales. In speaking recently with some assessors, in Canyon County for example, it was indicated that up to 60 percent of those market sales were foreclosure sales. **Mr. Dornfest** said the question is are they usable or not usable, market sales or not market sales. The IAAO recognized this issue and addressed it in their published standards. The Idaho Tax Commission adopted those standards to say if foreclosures are one or two sales in the whole community, then don't include them in the statistical study. However, if it is 20 percent or more of that marketplace, then those sales should be used, provided there wasn't any vandalism or other reason to believe a particular property is not representative of value in the study. **Mr. Dornfest** said this issue has been discussed at length with county assessors and they are supportive of this rule.

**Mr. Dornfest** said Rule 608 relates to the Homeowners Exemption. The rule conforms with provisions of H 584a and provides that the homeowner's exemption continues for one year after the death of the individual who has previously qualified. The new proposed rule explains that the homestead must continue to the claimant's estate without change in the owner of record and that property that are in life estates will not continue to get the exemption. **Mr. Dornfest** explained that normally upon the death of the homeowner and occupant, the exemption would be lost, because the requirement of occupancy would no longer be fulfilled. The legislation changed the rule so that the exemption will be retained for one year after death provided the property is still in the estate and not moved on to someone else.

**Mr. Dornfest** said this change created two issues the Commission needed to resolve. One relates to "ownership of interest" particularly in the case of life estates. He described a life estate as someone who owns property and grants ability for someone else to live there for the remainder of their life, and as soon as that "remainder life" individual dies, the property returns to the original owner. In the case of life estates, there will not be a continuation for the year following death.

**Mr. Dornfest** said the second issue was "occupancy." He said obviously there is no occupancy requirement since the original applicant is deceased, but debate raised the question of what to do about renters. The property is still in the estate, but is rented out during the ensuing year. As there was nothing in statute to address the issue, **Mr. Dornfest** said the Commission wanted to promote clarity and uniformity to the extent possible among the counties for the administration of such laws. The Commission decided occupancy is not relevant, which means whether there is no occupant or there is a renter, the extension of the exemption would not be jeopardized for one year.

Rule 630 relates to the tax exemption for new capital expenses. The rule conforms to provisions of H 356 and requires that an annual application be submitted to the county in order to claim the property tax exemption under Idaho Code § 63-4501.

**Mr. Dornfest** said this rule is about very large investments along the lines of a billion dollars in order to qualify for the exemption that lowers the taxable value of the property to no more than \$400 million. The rule outlines the description of what must be included when applying for the exemption for the first year, and limited the inclusions for subsequent years. **Mr. Dornfest** said the rule also addresses the concern about if a taxpayer changing their mind about three years into a seven year agreement, the taxpayer has the option to inform the county and the exemption would be removed for the following year. **Mr. Dornfest** said the Commission worked closely with Micron on this provision.

**Mr. Dornfest** explained Section 05, which states that once a taxpayer meets the criteria and makes the investment as necessary, the taxpayer will continue to receive the exemption forever with no expiration date in statute. This rule makes sure there is proper notice that the exemption will continue without additional notice. The exception is if a taxpayer owns multiple properties, the taxpayer needs to notify the county annually which property the taxpayer wants to hold the exemption. If the taxpayer fails to give notification, the county will put the exemption on the highest valued property.

Rule 995 relates to the distribution of sales tax. **Mr. Dornfest** said the distribution has been based primarily on information from the Census Bureau's calculation of the population of cities and counties. However, the Census Bureau doesn't just provide numbers every ten years, but also estimates every two years, as well as 'preliminary' estimates, **Mr. Dornfest** said, to "to the chagrin" of the Commission. He the Commission accidentally used the preliminary estimates one year, and caused a lot of disruption to the counties and the Commission was very apologetic.

**Mr. Dornfest** said now the Commission wants to be very clear on which tables from the Census Bureau will be used from now on. Additionally, Section 04 had a definition of "Incorporated City" as having a mayor and council and also being recognized for the distribution of federal revenue sharing money. **Mr. Dornfest** said that is not appropriate anymore as the federal program has ceased to exist, so there is no longer that requirement for cities.

**Mr. Dornfest** described how Section 05 stated that two different estimates used as the basis for the distribution of the monies would be updated at least annually and the Commission would name when that would occur. He said that can be done with valuation of properties, but not population, because it is not a number that is self-generated so the Commission cannot guarantee when it is going to come out from the Census Bureau. Now there is a general rule that says the Commission will update the following quarter once the information is released.

**MOTION:**

**Chairman Siddoway** moved to approve **Docket No. 35-0103-1203**. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
35-0103-1204**

**Mr. Dornfest** continued the rules review with a description of **Docket No. 35-0103-1204**, relating to Property Tax Administrative Rules. He said Rule 600 is a very general rule about property exempt from taxation. It is amended to comply with H 356 which requires applicants for certain property tax exemptions be notified of the decision to grant or deny the application by May 15. It also set up new procedures for granting exemptions by separating exemptions that are applied for by operating property companies that are assessed by the Commission from those applied for by locally assessed taxpayers, such as homeowners, businessmen and the like. **Mr. Dornfest** said the procedures are very different. For example, it does not do any good for a centrally assessed railroad to apply to a county commissioner for an exemption. The main point is to carry forth the theme of a separate process, as in notice of decision, to carry forth the process of having county commissioners grant or deny an exemption application.

Section 03 relates to confidentiality. Section 9-340d provides case examples where there should be confidentiality. **Mr. Dornfest** said one of those cases is when information about a company is turned over to the assessor and later passed along to county commissioners, it is considered confidential. Statutory change flipped that process around, and said that the exemption is not applied for with the assessor, but rather with the county commissioners. Since the information is now submitted to the county commissioner before it's turned over to the assessor, the Commission felt that information should still be considered confidential.

Rule 83 is amended to comply with Idaho Code § 63-1305A, pursuant to H 697 which provided a special levy ability for certain taxing districts that had very large judgements against them and subsequently had an election to further authorize a special levy for paying off these judgements. **Mr. Dornfest** described how a provision of the bill said before a taxing district could levy under the special provision, it had to use up all other budget capacity. Each district had a certain amount it was allowed to levy each year and the Commission wanted to make sure it was being used. However, he said, in some instances, it is simply impossible because besides the budget limit, there is also a rate limit and if the rate limits have all been met, there may still be excess budget that cannot be used, which would have negated the goal of the legislation. The Commission addressed this issue in Section 13 by saying districts have to budget the maximum amount permitted and that requirement would be deemed met. Districts would not be required to levy in areas they do not have, meaning a county without an airport would not levy for an airport district. The Commission clarified that districts have to use additional funds if they have restricted themselves unnecessarily and could create new funds. **Mr.**



**Dornfest** said the Commission felt this rule was important to help districts not find themselves in impossible situations.

**MOTION:** **Senator Werk** moved to approve **Docket No. 35-0103-1204**. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

**DOCKET NO. 35-0103-1205** **Mr. Dornfest** described **Docket No. 35-0103-1205** in the Property Tax Administrative Rules relating to the Assessor's Plat Book. He said this rule is amended to update a 1973 edition manual the Commission uses for maintenance of plat maps to the 2009 edition. He said the rule also updates that maps may be maintained digitally or in other formats. **Mr. Dornfest** said the Commission finds it is better when it refers to publications to try and move those publications to one master rule called 006. **Mr. Dornfest** apologized and said in the rule, there is also a minor error of duplication of a sentence and if this rule is approved, the State Department of Administration Rules Coordinator will automatically correct the sentence. **Chairman Siddoway** said in his review of the rules, he noticed the error and showed it to Commissioner Ken Roberts.

**MOTION:** **Chairman Siddoway** moved to adopt **Docket No. 35-0103-1205**. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

**DOCKET NO. 35-0103-1207** **Mr. Dornfest** pointed out another small error in the descriptive summary of **Docket No. 35-0103-1207** of the Property Tax Administrative Rules. He said in Rule 509, a reference to Idaho Code should be § 63-602 and not § 63-902. The first rule in this docket is Rule 000, which is a legal authority rule that states the Tax Commission's authority for promulgating rules when needed to update statutes and statutory references and additional germane chapters. This rule had not been updated for a long time until now.

Rule 003 is amended to update and correct reference to administrative appeals and which sections of Idaho Code provide for administrative appeals.

Rule 006 is amended so the Tax Commission can incorporate by reference national publications and other reference material. It is amended annually to include current versions or updates or new materials. Section 02a updated the Standard on Digital Cadastral Maps and Parcel Identifiers from the 2009 to the 2012 publication. **Mr. Dornfest** noted it is not updated annually but on an irregular cycle. He said the Commission also wanted to make sure that there are online references available since many publications are no longer printing hard copies. Such references include a date on which the online version was last accessed and verified.

**Mr. Dornfest** described Rule 225 as providing for various types of documentation that taxing districts, counties or urban renewal agencies must furnish when they form, when they amend boundaries or when they dissolve. He said the previous requirement suggested if a dis-incorporated or dissolving entity can provide a map, then a map should be included in the documentation. He said it was a requirement without any meaning because the Commission does not use that map. He said the Commission already has a map on file, so it does not need a map if an entity is to dissolve. This rule removes that requirement.

Rule 313 is about the assessment of transient personal property, which consists 'only' of construction, mining and logging equipment. **Mr. Dornfest** said typically this is equipment that moves around between states or between counties. He said there are many sorts of proration systems for this equipment. He said the Commission did not feel the rules were entirely clear about when the property in question was out of state for part of the year and then came in to Idaho.

**Mr. Dornfest** said the statute provides that if the property is taxed in another state, it will be prorated for its time in Idaho. If the property is not taxed in the other state, then there is no clear direction in the statute. This rule clarifies that in that case, tax the property as if it were in Idaho for the full year, and prorate the time that it was out of state as if it were in its home county, and then prorate the time it was in other counties. **Mr. Dornfest** said the Commission felt that is consistent with statute.

Rule 404 has to do with the Commission responsibilities for assessing operating property, which is primarily public utilities and railroads. The rule is amended pursuant to H 462 which placed gathering lines for oil and gas properties under the Public Utilities Commission (PUC) for rate setting. He said once a property is under the PUC, the Commission is required to assess it, instead of being locally assessed by the county assessor. **Mr. Dornfest** said this rule adds that responsibility beginning in 2013.

**Mr. Dornfest** shared about the changes in Rule 509, which describes how counties need to provide abstracts and certain information on abstracts of value. It is being amended to account for a new exemption in H 519, commonly known as the Developers Site Improvement Exemption. He said Idaho Code § 63-602W(4) had a requirement that if there is a reduction in value of property due to the granting of the exemption, that it is shown as a negative number on the county's new construction roll, which is used to compute annual budget capacity for taxing districts. In order to accommodate that figure, the Commission needs to have that amount reported somewhere. This reporting requirement is added to the list of reporting requirements in Section 02. **Mr. Dornfest** said the counties are all aware of this rule.

Rule 510 is a listing and description of some of the different categories of land that counties use and report to the Commission. **Mr. Dornfest** said the particular use of this section number has not been in effect since 2006. He said the Commission left it there in case something came up, but it hasn't so now it is being removed.

Rule 511 is similar to Rule 510 in that it lists other categories for improvements that are now obsolete descriptions. **Mr. Dornfest** said the items listed have been moved to other categories and these sections will be removed. He said the counties are all on board with this change and no one has been using the obsolete categories for at least two years.

Rule 612 is amended to clarify that recreational vehicles wider than eight and a half feet are subject to property tax. The way the law is written, if a vehicle is licensed then it is not subject to property tax. The Department of Transportation has notified the Tax Commission that they don't license those oversized vehicles. **Mr. Dornfest** said the Commission was concerned about inconsistencies among counties on how to treat these items, so the Commission decided to create a rule for it. The rule describes that a license fee must be paid or the vehicle must be included on the assessment roll and therefore be subject to property tax.

Rule 619 pertains to the process by which a qualified taxpayer would apply for an exemption under pollution control exemption, which is provided for facilities for water or air pollution control. **Mr. Dornfest** said there was some confusing language in that the rule said the owner should 'petition' the assessor for an exemption. He said the Commission's legal staff said 'petition' is not the right language. One does not 'petition' for exemptions, one 'applies' for them. **Mr. Dornfest** said during the discussions about this rule, operating property companies recognized the dates in the rules did not work for them. For example, March 15 corresponds with applications for personal property declarations that taxpayers are required to submit, but centrally assessed operating property does not file anything with the Commission until April 30. Therefore, **Mr. Dornfest** said, the rule separates the process for personal property and operating property.

Rule 802 is a lengthy rule that describes how the maximum budgets of taxing districts are calculated annually under the three percent cap new construction rules. **Mr. Dornfest** said this became more complicated under H 519, which provided for the Site Improvement Exemption. He described that the value captured on new construction roll is the value due to a change of land use classifications, as when farm land becomes residential. When that happens, the land typically goes up in value. That difference, even without a building on it, was considered construction and generated more budget capacity in determining the maximum amount that any taxing district could levy in a year. **Mr. Dornfest** said part of that value change could be due to the site improvements, like grading the site or adding utilities, that are now exempt. He said it is possible that a taxing district had captured an additional amount in their budget, but then it is not there because of the exemptions, and that creates a tax shift to other taxpayers. The statute required a deduction in subsequent years, but then it will roll back on once the building begins when the exemption goes away. **Mr. Dornfest** said the Commission worked closely with county administrators on how to implement this rule and created examples to help counties and taxing districts understand the process. He said the Commission plans to hold workshops for counties and taxing districts in spring 2013 to further explain and clarify this rule.

**Chairman Siddoway** asked about the administration of the transient personal property and how is it tracked and enforced. He asked if it is left to the Commission or if the counties take that information when someone is coming in to work on a construction project. **Mr. Dornfest** said that is a very good question and that the Commission does not do the tracking. He said they write the rules and try to help the counties administer them. He said his understanding is that taxpayers are required by law to file every November a list of their transient property and their home county. He said beyond that, he does not know how it is enforced.

**Vice Chairman Rice** thanked Mr. Dornfest for a very well done and informative presentation of all the points in these rules, which is reflected in the lack of questions by the Committee.

**Chairman Siddoway** moved to approve **Docket No. 35-0103-1207**. **Senator Vick** seconded the motion. Motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

Vice Chairman Rice passed the gavel back to Chairman Siddoway.

**Chairman Siddoway** also thanked Mr. Dornfest for his presentation.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:09 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, January 24, 2013**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S1009</a>	Relating to Appeals from the County Board of Equalization	<b>Vice Chairman Rice</b>
<b>GUBERNATORIAL APPOINTMENT</b>	Confirmation Hearing for the appointment of Leland Heinrich to the Idaho Board of Tax Appeals	<b>Leland "Lee" Heinrich</b> , Idaho State Board of Tax Appeals

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

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MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Thursday, January 24, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:09 p.m. He thanked the attendees for their patience in the start of the meeting and noted that Vice Chairman Rice and Senator Johnson will arrive shortly, after their photos are taken for the official record, and that is where the Committee Secretary was until now, as well.

**Chairman Siddoway** asked the Committee's permission to amend the agenda to accommodate the arrival of Vice Chairman Rice who is to present **S 1009**, and instead begin with the confirmation hearing for Leland "Lee" Heinrich.

**GUBERNATORIAL APPOINTMENT:** **Chairman Siddoway** invited to the podium Leland "Lee" Heinrich to discuss his Gubernatorial Appointment to the Idaho Board of Tax Appeals (BTA, Board). **Mr. Heinrich** deferred to the Dave Kinghorn, Chairman of the Idaho Board of Tax Appeals. **Mr. Kinghorn** said he wanted to inform the Committee about some changes to the BTA. Chairman Lyle Cobbs passed away and Mr. Kinghorn took his place. Susan Renfro was the director, but she retired and was replaced by Steve Wallace. **Mr. Kinghorn** said he thinks the governor made a good choice in selecting Leland Heinrich and the Board supports his appointment.

**Mr. Heinrich** approached the podium and shared his background. He said he is currently retired, but from 2006 to 2010 he served in the Idaho Senate for District 8, including four years on the Local Government and Taxation Committee, two of which were as Vice Chairman under Senator Hill who was Chairman at the time. **Mr. Heinrich** said when the governor appointed him, the governor actually appointed two people, because his wife, Linda, has been there with him every step of the way since 1978. **Mr. Heinrich** shared that he served as Valley County Clerk for sixteen years, and before that he and his wife operated a lodge on Lake Cascade with sixteen cottages, grocery store, gas station, boat and show machine rentals, trailer park, recreation hall, and laundromat. He said they sold that when their kids graduated and then went into public service. **Mr. Heinrich** shared prior to that he worked with Idaho Farm Bureau and Arizona Farm Bureau and he was born and raised on a sweet potato range south of McCall. He graduated from Donnelly/McCall High School and went on to University of Idaho for his Agricultural Economics degree. **Mr. Heinrich** said he has always been active in the community.

**Mr. Heinrich** said he was semi-forced into retirement from the Senate and after a couple of years in his woodworking shop, he was ready to again offer his service to Valley County and the state of Idaho, the citizens of which have trained and trusted him for so many years. When the opening on the BTA came up, he said he was encouraged to apply for it, given his experience as Valley County Clerk and clerking all the Board of Equalization hearings for that county.

**Mr. Heinrich** said since he was appointed a couple of months ago, he has conducted his first hearings and developed complete records of appeals for other Board members to review. He has attended two Board meetings and he is "in the process of home schooling himself in the entire envelope of what the Board of Tax Appeals is."

**Mr. Heinrich** said the BTA's process is very similar to that of a Senate Committee, where people come or are called to share the pros and cons of an issue and ultimately the Committee makes a decision. He said the BTA does the same, with one big difference: When a Committee makes a decision, policy is set; when the Board makes a decision, it is trying to interpret and implement that policy.

**Mr. Heinrich** said in the short time he has been with the BTA, he has enjoyed the position of being an administrative judge. He said it puts one in a position to insure the public has a simple and inexpensive process to appeal most any decision concerning property, sales or income tax. He said the BTA helps to insure fairness, confidence and equality in the taxation system.

**Senator Werk** said he thanks Mr. Heinrich because his presentation was one of the best initial presentations in a confirmation hearing that he's ever heard.

**Senator Werk** said he understands Mr. Heinrich's background, public service and passion are great qualifications for the position he is seeking. He said he looks forward to Mr. Heinrich's service for years to come.

**Senator McKenzie** said Mr. Heinrich has a very unique background that uniquely qualifies him to serve here, especially having served on this Committee and having owned a business before that. **Senator McKenzie** asked Mr. Heinrich if he sees any potential conflicts serving on the BTA based on Mr. Heinrich's background. **Senator McKenzie** said he realizes Mr. Heinrich is retired now and Senator McKenzie doesn't think there would be any current conflicts, and he does not anticipate anything that would come up from when Mr. Heinrich was either in the Senate or as Clerk, but he asked if that has been an issue for the Board.

**Mr. Heinrich** answered that he does not see any of that as a problem, except for when it gets into relatives. However, he said, the BTA has three judges and a decision requires two of three signatures to agree, so there is an opportunity to abstain, so that should not be a problem. As for his career in public service, **Mr. Heinrich** said he thinks that has been long ago enough that it won't be an issue. He said he attended a hearing and he didn't know the people who were there.

**Chairman Siddoway** said he was also impressed by Mr. Heinrich's resume and that he was grateful he had the opportunity to work with Mr. Heinrich when he did. He said the Committee will take up the confirmation for a vote next week and be in touch.

## **S 1009**

**Vice Chairman Rice** introduced **S 1009** to the Committee. **Vice Chairman Rice** said this is a small change that was actually discussed in one of the rules discussions on the timing for getting appeals from the County Board of Equalization to the Idaho State Tax Commission. The change is the county auditor shall submit all such appeals or tax appeals within 30 days of being notified of the appeal. It deletes the language "or by October 1, whichever is later." The purpose is to eliminate some of the lag that can happen so that the appeals are received right away. **Vice Chairman Rice** said it is more of a housekeeping change and it's his understanding it should go to the consent calendar.

**Senator Vick** said he has no problem with the bill, but as it is so early in the session, he wonders what the point is of sending it to the consent calendar for it to sit there for a month, when it could just go up for a vote.

**Chairman Siddoway** said it would only be for a lesson point. **Senator Werk** said he agreed it would be a learning experience for members but would offer a do pass recommendation anyway.

**MOTION:**

**Senator Werk** moved that **S 1009** be sent to the floor with a do pass recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 3:26 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, January 29, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
GUBERNATORIAL APPOINTMENT	Leland "Lee" Heinrich to the Idaho Board of Tax Appeals	
<a href="#"><u>RS21794</u></a>	Relating to Garnishment for Payment of Income Taxes	<b>Senator Monty Pearce</b>
<a href="#"><u>RS21706</u></a>	Relating to Eminent Domain	<b>Senator Jim Guthrie</b>
<a href="#"><u>H2</u></a>	Relating to Idaho Income Taxes to allow certain deductions	<b>Mike Chakarun,</b> Idaho State Tax Commission
<a href="#"><u>H3</u></a>	Relating to certain tax information in cases of identity theft	<b>Mike Chakarun,</b> Idaho State Tax Commission
<a href="#"><u>H4</u></a>	Relating to income taxes and certain technical corrections	<b>Mike Chakarun,</b> Idaho State Tax Commission

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, January 29, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:01 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Siddoway** said the gubernatorial appointment of Leland "Lee" Heinrich is before the Committee.

**MOTION:** **Senator McKenzie** moved to send the gubernatorial appointment of **Leland "Lee" Heinrich** to the Idaho Board of Tax Appeals to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

**Chairman Siddoway** asked the Committee's permission to amend the agenda as Senator Pearce had yet to arrive, so the Committee could hear the next item first.

**RS 21706** **Chairman Siddoway** invited **Senator Guthrie** to the podium to discuss **RS 21706**, relating to Eminent Domain. **Senator Guthrie** explained the change he is recommending will add exclusions for takings of "trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use, unless adjacent to a highway, road or street." He said this is a private property rights issue, something he cares about deeply. He said around the country, there are more and more of these takings and legislation is being passed in many other states, including the 2008 Utah legislation which is almost identical to this **RS 21706** proposal. **Senator Guthrie** said he ran this bill through the House in 2011 but couldn't get a hearing on it in the Senate, so he appreciates the hearing today.

**Senator Guthrie** said the Attorney General opinion at the time it was in the House was that the determination of public use for which the power of eminent domain may be exercised appears to be a policy choice left to the legislature's discretion. **Senator Guthrie** also mentioned a Supreme Court case in which the court ruled against the property owner and allowed the property to be taken. On the heels of that decision, the highest court also said that states are free to make their own laws. **Senator Guthrie** asked for the Committee's favorable support for this proposal.

**Senator Werk** asked for clarification by giving an example. He said if there was an instance where a street was being redone, like in Ada County where they are trying to accommodate pedestrians and cyclists for multi-use roadways, and everyone around a small piece of property was willing to allow them to do the project, but one person was not willing.

**Senator Werk** asked if the 'one' person who was not willing would cause the project to come to a stop or cause the bike lane or sidewalk to go all the way across except for that one person's section. **Senator Guthrie** said the intent is if public infrastructure is being built, that if the need arose to take extra for a bike lane, this legislation would not prohibit that. It is to allow at least some opportunity for those kinds of activities if they're consistent with other roadways. He said in other words, if the county came in to take some property for a new road, and they wanted an extra ten feet, they would have the option and this would keep that in place.

**MOTION:**

**Senator Vick** moved to send **RS 21706** to print. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

**RS 21794**

**Chairman Siddoway** invited Senator Pearce to the podium to discuss **RS 21794** relating to Garnishment for Payment of Income Taxes. **Senator Pearce** offered some background on the issue with a story about a business in his district who lost an employee because the state was going to garnish his entire wages. He said the employee quit the job and went across the river to Oregon and got a job there instead. He said he has encountered several people who have run into the same problem. **Senator Pearce** said he thinks this is kind of a merciful bill because it limits the ability of the state and the federal government collectively to take 25 percent of a person's wages on a monthly basis. He pointed out the first page of the proposal is updating code that hasn't been updated in a while.

**Senator Hill** said he thought the 25 percent was going to be for the state to collect taxes and penalties, but now it appears it is federal and state together will be limited to 25 percent, so if federal takes all 25 percent, does that mean the state won't get any. **Senator Pearce** answered that he is not sure of the exact law as to how that works, but he said he imagines federal is first with garnishment, and the state would wait until that is done and then collect. He said he thinks the issue and problem is that people are struggling and who knows why they have fallen behind or into trouble, but when 50 to 75 percent of their income is taken, how are they going to make the house payment and car payment and keep food on the table. He said they have to leave and go find someplace else to get the income. **Senator Pearce** said the fiscal impact is really unknown at this point, but he thinks eventually it will bring in more than less.

**Senator Werk** said if Senator Werk is reading the language correctly, it could imply that what is being done is limiting the state 'and' federal government garnishment abilities to 25 percent, and he said he is going to assume the state does not have the authority to limit the federal garnishment ability in state code. **Senator Pearce** said federal garnishment is already limited at 25 percent, and that is federal policy. When someone earns wages, the most the federal government can garnish is 25 percent.

**Vice Chairman Rice** said since he is an attorney, he has a different reading of the proposal. He said his understanding is it limits the combination to 25 percent total, so if federal takes 25 percent, then the state will not take anything until federal is done collecting. **Vice Chairman Rice** asked if the Tax Commission interprets its authority as allowing them to take up to 100 percent, even if statute limits everyone to 25 percent, except in cases of child support. **Senator Pearce** said the problem is that code allows the Tax Commission to take 100 percent of the wages.

**Senator Johnson** pointed to the existing Section 11-207 that refers to an individual's 'aggregate disposable earnings' but the language added in this proposal refers to 'gross wages.' **Senator Johnson** asked if there is a difference between disposable earnings and gross wages. **Senator Pearce** said he would have to defer to someone more knowledgeable on that because he would not want to misrepresent anything, but he said he believes that section mainly deals with child support and those are different than state income tax penalties and interest.

**Senator Werk** said he looked it up on his computer at his desk and gross income is before any deductions including anything deducted before being paid and disposable income is income after taxes and fixed expenses. Disposable income will be a lesser number than gross.

**MOTION:**

**Senator Hill** moved to send **RS 21794** to print. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

**H 2**

**Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager for the Idaho State Tax Commission, to the podium to present **H 2**, relating to Idaho Income Taxes to allow certain deductions. **Mr. Chakarun** said he is here to speak in favor of **H 2**. He said under current law, some losses such as theft losses, Ponzi scheme losses and some other losses are deductible only as part of an itemized deduction and are not allowed as part of an Idaho Net Operating Loss (NOL), even though it is allowed as a federal NOL. He said this means these losses may be fully deducted over one or more years on the federal returns but only fully deducted to the Idaho taxpayer if the taxpayer has sufficient income that year to fully absorb the loss.

**Mr. Chakarun** said a problem arises when the taxpayer receives a recovery for part or all of that loss in a subsequent tax year. The loss recovery is fully taxable on the federal return, as it should be. Then the recovery flows into the Idaho tax return and will be taxed as well, even though that underlying loss might not have been deducted in full or in part on the Idaho return. In effect, Idaho is taxing "phantom income." **Mr. Chakarun** said this bill corrects this unfairness by allowing a deduction for Idaho purposes an amount equal to the amount of the recovery if the taxpayer did not receive a deduction for the loss on a prior Idaho return. He said, in other words, the Tax Commission does not want to tax the loss recovered if no benefit of the loss has been claimed. He said the bill does not increase the amount of the loss deducted on the Idaho return. The fiscal effect will reduce general fund revenue by \$250,000.

**MOTION:**

**Senator Werk** said he is trusting the bill will do what it says it will do. **Senator Werk** moved that **H 2** be sent to the floor with a do pass recommendation.

**Senator Hill** seconded the motion. Motion carried by **voice vote**. **Senator Werk** said he would carry this bill on the floor.

**H 3**

**Mr. Chakarun** presented information about **H 3**, relating to certain tax information in cases of identity theft. He said everyone knows identity theft is a serious and growing problem across the country and here in Idaho. An identity thief can steal a social security number, use that number to gain employment and then file an Idaho income tax return and despite the best efforts of the Tax Commission, the return could process through the system and a refund be issued. He said when the true owner of the social security number files their return, the return will be rejected because a return using that number has already been accepted. **Mr. Chakarun** said if the true owner of that social security number contacts the Tax Commission to complain, the Commission staff cannot assist. Current law Idaho Code § 63-3076 prohibits the Tax Commission from disclosing a tax return or tax return information except as provided by statute, court order or Commission rule. Identity theft does not fall into one of these categories. **Mr. Chakarun** said obtaining this information is needed to file a police report, which is the first step in the process to recover one's identity.

**Mr. Chakarun** said to assist victims of identity theft, the bill will give the Tax Commission the ability to release certain tax information to the victim if that person can verify their identity to the satisfaction of the Commission. The Commission will proscribe by rule what type of information a victim will need to provide to verify their identity.

He said as part of the rule making activity, the Commission will work closely with law enforcement, the Internal Revenue Service (IRS) and such groups as the Idaho Coalition Against Identity Theft, to develop safeguards to prevent release of information into the wrong hands. **Mr. Chakarun** said the bill will only allow the release of the identity thief's name and address. It will not allow release of other information on the return, such as income, deduction or W-2 information. This provision also will apply to any business that is a victim of identity theft. **Mr. Chakarun** said reclaiming one's identity is a daunting and difficult task and this bill can make the task a little easier.

**Chairman Siddoway** asked about valid written information and what declares validity. He said, "if someone has stolen my identity and they have everything from social security numbers on down, what do I have to go through to have a valid application for that information?" **Mr. Chakarun** answered that is why the Commission would work with law enforcement and other groups that work on preventing identity theft. He said he personally does not know what the Commission would do, but the IRS is working through its process to come up with a mechanism. He said the problems with the IRS are even greater than it is in Idaho. **Mr. Chakarun** said the Tax Commission could model a plan after what the IRS does.

**Vice Chairman Rice** said he noticed the bill is limited to just the identity of the individual that has apparently stolen their identity and asked if there is a process in place for verifying whether the other deductions for children or spouse may also be stolen or fictitious. **Mr. Chakarun** said the objective is not to release more information than necessary. He said there may be information on that tax return that may not be part of the identity theft itself. He said the Commission may want to limit it to just information as the name and address and not get into details of children. He said he recognizes a victim may have their family's identities stolen as well, but that may be further down the road than the Commission can go right now.

**Vice Chairman Rice** said he had a client who had his identity stolen, and the thieves were targeting the elderly. **Vice Chairman Rice** said the IRS is exceptionally slow to follow up on these cases, in spite of the fact that there are groups getting large amounts of refunds. He said part of his concern is that the Commission should also follow up to make sure that the Commission isn't getting similarly scammed for refunds that are not due by scammers. These individuals are taking the federal government for hundreds of millions of dollars every year. **Mr. Chakarun** said the Commission takes great pains with the number of edits to make sure they catch that kind of thing on returns. He said Idaho is a small enough state that can address these issues more quickly than the IRS can.

**Senator McKenzie** said he thinks this is a good policy. He said he has been seeing more identity theft issues all over and he's glad this body is taking steps to create policies that allow victims to regain control of their financial lives.

**MOTION:**

**Senator McKenzie** moved to send **H 3** to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**H 4**

**Mr. Chakarun** presented **H 4**, relating to income taxes and certain technical corrections. He started with Section 1 and said H 634 from the 2012 session clarified the credit for taxes paid to other states, Idaho Code § 63-3029, includes the Texas margins tax. This change adds a cross reference from § 63-3029 to § 63-2011 to link the two provisions to be consistent with other taxes that qualify for the credit.

**Mr. Chakarun** said Section 2 is changed pursuant to H 364 from the 2012 session, which clarified the deduction for retirement benefits paid to certain retired police officers and revised the definition of disabled and replaced the word "widow" with "widow and widower." However, not all the references were changed. This bill corrects Idaho Code § 63-3022A to replace all mentions of the word "widow" with "widow and widower" and adjusts other gender references. There is no change to the intent or application of the statute.

Section 3 is changed pursuant to H 485 from the 2012 session, which revised the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrades to existing residences. Through an oversight, the drafters omitted a requirement that the residence be located in the state of Idaho and that the residence be the primary residence. **Mr. Chakarun** said the Commission discovered the omission during its rule writing process and discussed it with bill sponsors. **Mr. Chakarun** said both agreed that this change is needed. Otherwise, property outside of Idaho could qualify for the deduction. The bill inserts the word "primary" and words "in the state of Idaho" with respect to residences that qualify for the energy efficiency deduction. The change is retroactive to January 1, 2012 to prevent abuse.

**Mr. Chakarun** said the change in Section 4 clarifies that the deduction for technological equipment donations is limited to the lesser of fair market value or cost of the donation. Some taxpayers are buying this equipment at a substantial discount below fair market value and then claiming the higher fair market value as a deduction. He said this change is consistent with other deductions that are limited to the lesser of cost or fair market value.

Section 5 is changed to modify Idaho Code § 63-3072 relating to the statute of limitations for claiming a refund to include reference to new Idaho Code § 63-3036B enacted in 2012 relating to pass-through entities backup withholding. Section 6 provides a January 1, 2013 effective date, except for Section 3 is retroactive to January 1, 2012, the effective date of the provision being amended.

**Senator Vick** asked about Section 4 and if there is any concern that the bill would reduce number of deductions for charitable purposes? **Mr. Chakarun** said he wouldn't think so, but that would be up to an individual taxpayer to decide if they were looking for the charity to the school or the tax deduction.

**Chairman Siddoway** said many of these items look familiar because this Committee just covered them in the pending rules review. He said he questions the need to do this now and if there is a bunch of overlap. **Mr. Chakarun** said the Commission tried to conform the rules to the way they hoped statute would turn out.

**Senator McKenzie** asked about Section 6 and making the technological donations retroactive. He said his concern is for the people whose tax returns are being prepared now and they may not know about that change. He asked since there is no fiscal impact, is there really a need for an emergency clause and could it just go into effect January 1, 2013 to give people time to adjust to the change.

**Mr. Chakarun** said the Commission has gone on a CPA Practitioner road tour and every time they meet with a group, they educate them about this particular change, so he said he feels comfortable that practitioners in Idaho are aware the change could be coming. He said if the provision was not changed retroactively now, there would be a negative fiscal effect on this technical corrections bill.

**Senator McKenzie** asked if there was a figure available for what that fiscal effect might be. **Mr. Chakarun** asked if Senator McKenzie was referring to the fiscal effect of the entire bill, or the window that would be opened up for the 2012 year. **Senator McKenzie** said he is referring to the change in Section 3 combined with the emergency clause and what the dollar difference would be for making that change. **Mr. Chakarun** said it would be difficult to assess that, and they are trying to nip the problem in the bud by cutting it off at January 1, 2012. He said with the fiscal effect at zero right now, the Commission is comfortable, but if there were to be a change prospectively, he would need to try and estimate what would be the risk this year. **Senator McKenzie** said he might be misunderstanding but if changes are made to deductions for technological equipment to now say that, regardless of the fair market value, the deduction cannot exceed the amount of taxpayers cost, it seems like that would have a fiscal impact. **Mr. Chakarun** said he thought **Senator McKenzie** was referring to the energy efficiency bill. **Senator McKenzie** said he understands and had the sections flipped and sees they were talking about apples and oranges.

**Senator Johnson** said he had some information to share that he received from Cynthia Adrian at the Tax Commission about the technological equipment deduction. He said that since 2002, the average claim is \$52,000 per year. The average number of tax returns claiming that deduction is 1,595 for an average of about \$32 per return.

**MOTION:** **Senator Werk** moved to send **H 4** to the floor with a do pass recommendation. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**. **Senator Werk** said he would carry this bill on the floor.

**Vice Chairman Rice** volunteered to carry **H 3** on the floor.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:41 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, January 31, 2013**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 5</a>	Relating to Cigarette and Tobacco Product Taxes and Permitting Requirements	Michael Chakarun, Idaho State Tax Commission
<a href="#">H 12</a>	Relating to the Sales and Use Tax: Benefits Provided Under the Federal Supplemental Nutrition Assistance Program; Clarification for Members of the Military	Michael Chakarun, Idaho State Tax Commissoin
PRESENTATION	A Case for Implementing HB599AA (2008) Reforming Idaho's Personal and Operating Property Taxes	Dr. Steven Cooke, Retired UI Agricultural Economist

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

Phone: 332-1315

email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, January 31, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

**H 5** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager for the Idaho State Tax Commission (Commission), to the podium to present **H 5**, relating to Cigarette and Tobacco Products Taxes. **Mr. Chakarun** explained current law makes it unlawful for a person to act as a wholesaler of cigarettes without a permit. The statute also requires that a permit shall be held only by persons actively engaged in making wholesale sales of cigarettes subject to tax. He said some manufacturers and wholesalers of cigarettes in Idaho may sell cigarettes to Indian tribes or military commissaries or other licensed wholesalers. **Mr. Chakarun** said there is no cigarette tax stamp applied to those cigarettes so some of the vendors think they don't need a permit because they're selling tax exempt cigarettes. He said this bill will clarify that a permit 'is' required by striking the words "subject to tax under this chapter." **Mr. Chakarun** said the Commission believes the change will prevent inadvertent noncompliance by cigarette wholesalers and imposition of penalties.

**Senator Hill** asked if there has been a problem with inadvertent noncompliance in the past and if this preventative measure is taken, could there be a possible positive fiscal impact. **Mr. Chakarun** answered he is not aware of any but it is a concern raised by the cigarette tax auditors that they don't want a potential problem to get out of hand, because there would be penalties imposed.

**Vice Chairman Rice** said his read of it before was that if the cigarettes weren't subject to tax under that chapter, they did not have to get a permit. He asked if this change will now require them to get a permit. **Mr. Chakarun** replied the first part of the statute reads it shall be unlawful for a person to act as a wholesaler of cigarettes without a permit. There is confusion because they think there is not a stamp on them, so therefore they're not subject to tax. **Mr. Chakarun** said the Commission is saying every wholesaler has to have a permit so the cigarettes can be tracked. This bill gets rid of the inconsistency in part three of section one of this statute.

**MOTION:** **Senator McKenzie** moved to send **H 5** to the floor with a do pass recommendation. **Senator Werk** seconded the motion. Motion carried by **voice vote**.



**Mr. Chakarun** presented **H 12**. He said Section 1 is a housekeeping measure. It relates to Idaho Code § 63-3622F which provides an exemption from sales tax for food purchased using federal food stamps or coupons issued under a variety of federal statutes, including the Food Stamp Act of 1977, Food Security Act of 1985 and the Federal Food, Conservation and Energy Act of 2008. Congress passed a bill in 2008 to rename and consolidate these programs, and it is now known as the federal Supplemental Nutrition Assistance Program (SNAP). **Mr. Chakarun** said food stamps are not issued anymore as they are now done on electronic benefit cards. This provision updates the statute to reflect current terminology and payment method. The provision makes no changes to the scope of the program or eligibility requirements. It strictly cleans up terminology.

Section 2 relates to military members who move into Idaho and whether or not there is tax on the goods they buy before moving to Idaho. **Mr. Chakarun** explained Idaho Code § 63-3621(l) gives a tax exemption on certain articles brought into Idaho by military personnel temporarily assigned to Idaho and their spouses who accompany them, if the articles were acquired in another state prior to their move to Idaho while a resident of that other state, and were purchased three months before moving to Idaho. This exemption for military members was added in the 2012 legislative session. He said, with hindsight, the language is overly restrictive, does not reach the intent of the bill's sponsor and could actually cause a hardship to the military member if not changed.

**Mr. Chakarun** shared a scenario as an example. He said, "The military member buys a car on Monday, receives orders to transfer to Idaho on Tuesday, moves to Idaho on Wednesday, and is required to pay use tax to Idaho on Thursday." **Mr. Chakarun** said in that scenario, the member would have to pay use tax because he didn't meet the three month window. The provision in this bill fixes the problem by exempting the goods from use tax if the goods were purchased before receiving orders to transfer to Idaho. He said it also removes the requirement that the military member must be a resident of the state in which the goods were purchased. The intent is to prevent hardship on military members moving to Idaho.

**Vice Chairman Rice** asked if the Commission has checked with the military to see how long prior to a move they generally cut orders. **Mr. Chakarun** said several Commission staff members are in the military and when they saw the change made last year, they said it did not help very much and were upset that the provision wasn't right. He said this provision was designed to help fix that. He said he personally did not check with the military but he did hear from some of the staff who have first hand experience with this issue and thought this was a much better solution. **Vice Chairman Rice** asked what if their orders were cut longer than 'before three months' and would items they purchased after they got their orders be subject to the use tax, even though it was purchased more than three months before their move to Idaho. **Mr. Chakarun** answered yes, he believes so.

**Senator Lacey** asked about a sentence in the bill that still has a reference to the three month provision in it, and below that it says it does not apply, so he'd like to know what that reference relates to. **Mr. Chakarun** said that section still relates to other people that move into Idaho. The change being requested exempts and carves out that section strictly for the military and their orders.

**Vice Chairman Rice** asked **Mr. Chakarun** if the Commission would be opposed to this provision being amended "so that members of the military that moved 'after their orders or less than three months, whichever is shorter.'" **Mr. Chakarun** answered they would be amenable to that.

**MOTION:** **Vice Chairman Rice** moved that **H 12** be sent to the 14th order for amendment. He said he would like it to be changed to make sure there isn't a longer window for military personnel. **Senator Vick** seconded the motion. Motion carried by **voice vote**.

**PRESENTATION:** **Chairman Siddoway** invited Dr. Steven Cooke, Retired University of Idaho Agricultural Economist, to share a presentation called, "A Case for Implementing HB599AA (2008) Reforming Idaho's Personal and Operating Property Taxes."

**Dr. Cooke** said with this presentation, he is representing only himself and not the University of Idaho or any other organization. He thanked the Committee members for their service and called them the nine most important people in the state on this topic. **Dr. Cooke** said he divided the presentation into three parts: The Impacts of Eliminating the Personal Property Tax in Idaho and the Idaho Economy; The Current Labor Force in the Economy, in which he will argue that Idaho is currently in the low service, low skill, low wage economy trap; and, Reforming the Personal Property Tax as a way to Improve Idaho's Labor Force and Economy, in which he plans to demonstrate how to move Idaho into a high service, high skill, high wage economy. A complete copy of his presentation is available in the official record in the office of the committee secretary. (See Attachment #1)

**Chairman Siddoway** asked about centrally assessed operating taxes, specifically about how the electric utilities (electrics) have a virtual monopoly and the rates are set through the Public Utilities Commission (PUC). He said whether the tax is collected by the electrics or dropped and there is a shift, consumers will still pay a tax one way or the other, whether via sales tax or real property tax, either through the utility or through a shift. Given that information, **Chairman Siddoway** asked Dr. Cooke if he thinks there is any incentive to leave operating in or should they be exempted from the exemption.

**Dr. Cooke** said he thinks the "Big Fella" should continue to be taxed as personal operating. He said he thinks Chairman Siddoway is right that it is a pass-through tax to the consumer through the electrics. He said he thinks it is important to tax them because under current tax structure, the inputs are taxed more than the outputs are taxed.

**Chairman Siddoway** asked Dr. Cooke to contrast that with centrally assessed monopolies versus a wild west competitive private enterprise that is considering whether to build their operation in Idaho or build their operation in Bangladesh. **Dr. Cooke** said going back to the electric utility example, he said according to a study he read, the United States is not doing its fair share in having a carbon tax on electrics, so the United States already has a competitive advantage in that regard.

**Chairman Siddoway** asked Dr. Cooke if he thinks the environmental advantages of going to work in the United States outweighs all the other benefits that would be available in another country. **Dr. Cooke** replied he thinks "firms have a moral obligation to make a balanced decision between their shareholders, their workers, the environment and consumers, and part of an energy or carbon credit would be a way for firms to assume responsibility to the environment."

**Chairman Siddoway** suggested ignoring centrally assessed operating tax for a moment to focus on the tax on business, and whether it is a small business paying \$3 to \$7 or a big business paying half a million dollars worth of personal property tax per year. **Chairman Siddoway** asked if a \$100,000 exemption or a \$250,000 exemption goes through and 96 percent of all the businesses in Idaho are exempted from personal property tax, what message does it send to the four percent of businesses that hire virtually half of the people in Idaho.

**Dr. Cooke** replied, "To whom much is given, much is expected." He said Idaho Power does very well in this state and this is their ability to contribute back to the infrastructure that they use. He said, "We live in a beautiful state, and we enjoy the infrastructure that makes it that way, and we pay for that."

**Senator Werk** asked if the examples with operating property that Dr. Cooke used in preparing the analysis would stretch across other types.

**Dr. Cooke** replied he feels "a bit like the drunk who is looking for his keys under the street light because that's where the light is." He said the data he had available to use from the Idaho State Tax Commission was operating property tax. He said if he had the data for the local use tax he would prepare an analysis with that. He said he thinks what is happening with operating tax is suggestive of what is going on.

**Senator Werk** said when discussing operating property, what is being discussed is utilities. If there is a tax on operating property/infrastructure property, it encourages efficiency in utilization and creation of that operating property. So, if a utility is thinking about building a new power plant, it would impact their business decision to know by adding that power plant, there would be operating property tax on that power plant, so the utility might look toward conservation and take into account that cost. **Dr. Cooke** replied yes.

**Senator Werk** addressed another question that was raised about attracting business to Idaho. He said in some instances businesses may have high amounts of personal property, such that if they looked at moving to this state, Idaho would be at a disadvantage in bringing in that business compared to other states that didn't have the same tax. He said he assumes if Idaho wanted to make the playing field 'uneven' for a sector that was considering Idaho but had a problem getting over the hump because personal property tax still existed, the state could make an economic decision to exempt a particular sector to allow them to come in and operate in Idaho. **Dr. Cooke** said that is exactly right, and the state could do that, but he sees a problem. He said if Idaho sends a message that the state is open to negotiating its tax structure, companies will do that as a matter of course. He said instead, Idaho should send a message to companies that says, "We are going to provide you an educated work force, solid infrastructure, and top of the line research to make your business productive, and you're going to have to pay your fair share as everyone else is." **Dr. Cooke** said in that way, the company will have the foundation to be very profitable and not feel like it's being treated unfairly.

**Senator Werk** said it seems the job is to balance between public infrastructure that provides skilled workers and transfer of technology from university sector to private sector that paves the way to grow high wage, high skill jobs. On the other hand, if all those things that help create infrastructure are cut back, the low end will take over because the high skill is not being created. **Senator Werk** asked if he recollects correctly about a survey that said the highest and best investment the public sector could make is in higher education.

**Dr. Cooke** said he is not familiar with the study, unless he's referring to a legislative study done last year that shows many Idahoans are not going on to higher education whether because of cost or because of job opportunities, and he said that is symptomatic of the problems. He said Idaho is not getting high skill jobs, so students don't see the benefits of higher education. **Dr. Cooke** said he thinks higher education can be used as a tool to educate the labor force in new technologies.

**Senator Hill** asked about the table that showed the number of jobs that would be created if personal property taxes are cut. He pointed out where Dr. Cooke said if \$45 million was cut from personal property tax, it would create 62 jobs in utilities. **Senator Hill** said he'd like to know how it could create any jobs in utilities because those utilities are guaranteed a certain rate of return from the PUC. If their costs are cut, their profit increases, which means they will get less of a rate increase from the PUC. **Senator Hill** said when there is a monopoly with a guaranteed rate of return, there is not a lot of incentive for them to be careful with their costs, so how is cutting their personal property tax going to create 62 more jobs.

**Dr. Cooke** said Senator Hill's insight is very good, because the point Dr. Cooke is making is that jobs are not generated by giving tax breaks to utilities. **Senator Hill** said he means no disrespect, but he is questioning the validity of the numbers, which gives him lower confidence in the other numbers in this analysis. **Dr. Cooke** said he thinks his numbers are valid, because if the cost of capital is lowered, the demand for that capital increases. He said there may be a shift related to lower costs and that is where the jobs could come from.

**Vice Chairman Rice** said Dr. Cooke just explained that if costs are decreased, the demand is increased. **Vice Chairman Rice** continued, if cost is decreased by eliminating the personal property tax on some of the businesses that have higher amounts of personal property, that would increase the demand to have more of that activity. So, if the cost of electricity is lowered because the personal property tax is removed, the demand for electricity would increase, and would that therefore increase more of the manufacturing sector jobs that would be higher wage jobs and change some of the other numbers. **Dr. Cooke** answered, "Potentially, yes. These things are not black and white." He said the point he is trying to make is a question of fairness among businesses, that if a tax break is given to businesses that are primarily operating property versus those that are real estate and buildings, then the economy is biased towards the one with high operating proportions. He said his point is "treating equals unequally is also unfair."

**Senator Bayer** commented that on the federal level, we have the national debt and a constitutional provision for a balanced budget on an annual basis. **Senator Bayer** said he thought he heard Dr. Cooke say he was not supportive of spending limitations. **Senator Bayer** said if one is to have adequate and stable taxes for public services, it would seem that one would want to have an adequate and stable appropriation process so that appropriation process doesn't balloon the bubble in the revenue flow. If that current is more stabilized, then when those differences are realized, **Senator Bayer** said as Dr. Cooke pointed out in another slide, they could be put in rainy day accounts to have a buffer to maintain an even keel tax appropriation process. **Senator Bayer** asked Dr. Cooke to comment on that.

**Dr. Cooke** said it would be limiting the taxes on operating property to zero if there is complete elimination of the tax. He said when that is done, he sees it as under funding infrastructure in favor of the firms that get the tax breaks, which in this case would be utilities. **Dr. Cooke** said therefore, it is under funding education so tax breaks can be given to electricity. He said, "The question before this Committee is, do we need more electricity and less education, or more education and less electricity."

**Senator Bayer** said he appreciates Dr. Cooke's comments. He said he'd like to follow up with another variable which is not just the term of adequate funding, but also the adequate management of said funds. He asked Dr. Cooke what his thoughts are in regards to tax policy and how it deals with taxing districts and local subdivisions of government that have budget-driven systems versus the legislature that has a revenue-driven system. **Senator Bayer** said it's like oranges and apples. He asked Dr. Cooke for his thoughts on potential changes in budget-driven systems, because, **Senator Bayer** said, he sees a big limitation as to how they can deal with tax policy because they deal with shifting. He said local level starts with a pie and says this is the budget, which is completely different than how it's done on the state level.

**Dr. Cooke** said he wanted to be clear about what Senator Bayer means, if he is referring to counties and school districts that determine how much they need and then take that ratio to the tax rate and then multiply that by the homeowner's property value. **Senator Bayer** said that is partly it, but he means when one starts with a budget template as opposed to an assessment of revenues and where they are coming from, which is what the state has to do. He said they start with budgeting and then 'back in' to revenue and make the pie whole one way or another.

**Dr. Cooke** said he ran for Latah County Commissioner and sat through budget hearings, and he has been on a University group that estimates for revenues from the state. He said he was waiting for the County Commission to go through a similar process at the local level, as Senator Bayer is referencing, and **Dr. Cooke** said the County Commission never did that. He said he asked the County Commission why they never sat down to figure out their revenues because he was shocked they only talked about expenditures. He said their response was they knew what their revenues would be, because property tax revenues were very stable. He said the only changes were the amount of construction. He said their practice is very straight forward and constrained. **Dr. Cooke** said he has some ideas on how to help out local governments. He said for example, he thinks housing transactions should be reportable so the assessor can have a comparison to market for assessed valuations. He said another idea for the local level would be to have impact fees that would require new construction to pay for itself. Impact fees are payments to the off site infrastructure that is needed as a community grows, like water and sewer services.

**Senator Bayer** said he thinks a frustrating situation for taxpayers is when there is a recession with unemployment and income issues and the revenue-driven system at the state level has checks and balances for changes in tax policies; however, at the budget driven local level, there are finite checks and balances for the taxpayers' tax burden.

**Dr. Cooke** said, "I would respectfully disagree." He said he thinks citizens of Idaho appreciate local services more than they appreciate the state services or federal services. He said they are least happy with property tax, and he would encourage making the property tax more transparent, fair and flexible.

**ADJOURNED:** **Chairman Siddoway** thanked Dr. Cooke and said the Committee is out of time. He adjourned the meeting at 4:30 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, February 05, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Review of Minutes from January 22, 2013	<b>Senator Johnson</b>
<a href="#"><u>RS21849</u></a>	Concurrent Resolution stating findings of the Legislature and rejecting certain rules of the Idaho Board of Tax Appeals	<b>Vice Chairman Rice</b>
<a href="#"><u>H 14</u></a>	Relating to Property Taxation to revise the calculation of net operating income of low-income housing	<b>Alan Dornfest</b> , Idaho State Tax Commission
<a href="#"><u>H 15</u></a>	Relating to the Sales and Use Tax to define the term "Primary" or "Primarily" with respect to the use of Tangible Personal Property	<b>Michael Chakarun</b> , Idaho State Tax Commission
<a href="#"><u>H 22</u></a>	Relating to Income Taxation to revise the reporting and paying periods for Idaho Income Tax withheld by certain employers	<b>Michael Chakarun</b> , Idaho State Tax Commission
<a href="#"><u>H 23</u></a>	Relating to the Taxation of Beer	<b>Michael Chakarun</b> , Idaho State Tax Commission
<a href="#"><u>S 1046</u></a>	Relating to Eminent Domain	<b>Senator Jim Guthrie</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
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MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Tuesday, February 05, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:01 p.m.

**MINUTES:** **Senator Johnson** moved to approve the minutes from January 22, 2013 meeting. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**RS 21849** **Vice Chairman Rice** introduced **RS 21849**, a concurrent resolution stating findings of the legislature and rejecting certain rules of the Idaho Board of Tax Appeals. The proposal relates to the Pending Rules review from earlier in this session in which changes to Rule 63, Rule 65 and Rule 140.06 were rejected.

**MOTION:** **Vice Chairman Rice** moved to print **RS 21849**. **Senator Lacey** seconded the motion. The motion carried by **voice vote**.

**H 14** **Chairman Siddoway** invited Alan Dornfest of the Idaho State Tax Commission to the podium to introduce **H 14** relating to property taxation. **Mr. Dornfest** said the bill is designed to correct an ambiguity in current law that was passed in 2009. The statute prescribes the way to appraise Section 42 low income housing for property tax purposes. The ambiguous language may be misinterpreted to mean that expenses should be subtracted from net operating expenses. This would in effect double-subtract expenses, which was never intended and was not implemented in that fashion. He said instead, as called for in **H 14**, expenses are to be deducted from effective gross income to derive net operating income. This is what has been done and the law change codifies current practice and current interpretation.

**MOTION:** **Senator Johnson** moved to send **H 14** to the floor with a do pass recommendation. **Vice Chairman Rice** seconded the motion. The motion carried by **voice vote**.

**H 15** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager of the Idaho State Tax Commission (Commission), to the podium to introduce **H 15**, relating to the sales and use tax to define the terms "primary" and "primarily" with respect to the use of tangible personal property. **Mr. Chakarun** said the word "primarily" is used about nine times in the sales tax act but is not defined. He said this causes confusion and uncertainty for taxpayers when they try to determine if tangible property is subject to sales tax when it is purchased or if it is exempt. The bill defines "primary" and "primarily" as: the predominant or greatest use of property. The goal is to develop a bright line test to determine the taxability of tangible personal property. Some taxpayers break down taxable uses into small components that are compared to one larger nontaxable use, and then conclude that primary use is nontaxable.

**Mr. Chakarun** gave an example: A forklift is used in a manufacturing plant. Thirty percent of the time, it is used in shipping, which is taxable. Thirty percent of the time it is used in the warehouse, which is taxable. Forty percent of the time it is used in the production area, which is 'not' taxable. Some taxpayers would conclude that since it is nontaxable forty percent of the time that the forklift would be exempt from tax. However, the bill requires the taxpayer combine all uses of the property into two categories: taxable use and nontaxable use, and the primary use is the greater of the two. In the example of the forklift, sixty percent of the use 'is' taxable, while forty percent is 'not' taxable. Therefore, the forklift is subject to sales tax. **Mr. Chakarun** added the fiscal effect is zero because the bill follows the Commission's interpretation of the statute.

**MOTION:**

**Senator McKenzie** moved to send **H 15** to the floor with a do pass recommendation. **Vice Chairman Rice** seconded the motion. The motion carried by **voice vote**.

**H 22**

**Mr. Chakarun** described **H 22** as a taxpayer friendly bill. He said under current law, large employers who withhold \$240,000 per year or \$20,000 per month must remit employee withholding on a pay schedule that overlaps two calendar months. This results in a withholding fiscal year reporting year of January 16th of one year to January 15th of the following year. Because wage and withholding reporting for employees is on a calendar year basis to prepare W-2's, these employers must file a reconciliation form with the Commission to ensure proper amounts are reported on W-2's.

**Mr. Chakarun** said these reconciliations are difficult for taxpayers to prepare and time consuming for the Commission to review. He said those returns result in a 92 percent error rate, and discrepancies often take two years to correct and can result in the employer being subject to penalties. This proposal streamlines the process by aligning the current fiscal year system to a calendar year system. Employers would remit withholding between the first and fifteenth of the month by the twentieth of the month. Then employers would remit withholding from the sixteenth to the end of the month by the fifth of the following month. He said this change has businesses' support and there is no fiscal effect. **Mr. Chakarun** said the effective date is for withholding periods beginning after January 1, 2014 to allow the Commission and taxpayers time to develop rules prior to the effective date.

**Vice Chairman Rice** asked if there has been any investigation as to what the additional cost will be to businesses doing the calculations and payments twice a month instead of once a month. **Mr. Chakarun** replied the Commission contacted some 600 employers and there was positive response and no objections. He said it will get them out of the problems with reconciliation issues.

**MOTION:**

**Senator Vick** moved to send **H 22** to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**H 23**

**Mr. Chakarun** introduced **H 23**, relating to the taxation of beer. He said current law states that the Tax Commission has the duty to prescribe rules relating to the reporting of beer shipments into Idaho by out-of-state brewers and manufacturers, and reporting deliveries of beer into Idaho by carriers for hire or carriers owned or employed by out-of-state brewers and manufacturers of beer. He said the need to require reporting by these entities is no longer necessary. The Commission no longer requires permits by out-of-state brewers and manufacturers and can cross check beer shipments using other methods. The bill strikes the words "it shall be the Commission's duty" which gives the Commission the discretion to prescribe rules as needed, but not require them to do so. This allows that if industry practices change and the need for a rule arises, the Commission will have that authority. Other minor changes include changing "act" to "chapter" and "account" to "fund."



**MOTION:**

**Senator Werk** moved to send **H 23** to the floor with a do pass recommendation. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

**Chairman Siddoway** asked the Committee who would be willing to carry these bills on the floor. Senator Werk will carry **H 23**. Senator Vick will carry **H 22**. Senator Johnson will carry **H 14**. Senator McKenzie will carry **H 15**.

**S 1046**

**Chairman Siddoway** invited Senator Guthrie to the podium to introduce **S 1046**, relating to Eminent Domain. **Senator Guthrie** said the bill seeks to amend Idaho Code § 7-701A to provide additional restrictions on the use of eminent domain. He said there are a few exemptions in Idaho Code already, and this would add "For trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use, unless adjacent to a highway, road or street."

**Senator Guthrie** offered some history on why this section exists in the first place and why it should be strengthened. He said as early as 1795 the United States Supreme Court called eminent domain a 'despotic power' which means tyrannical, dictatorial, repressive or cruel power. He cited the Berman v. Parker case of 1954, in which the Court ruled that eliminating blight is a legitimate use of eminent domain. **Senator Guthrie** said after that, the local government would see blight every time developers wanted to see a building. He said one of the most famous cases was the Kelo Decision when property was taken from landowners for upscale shopping, and to his knowledge, nothing has been built on that property yet. **Senator Guthrie** said on the heels of that decision, the Supreme Court did rule the states can use their statutes to provide greater protection against eminent domain abuse. He said it is his understanding that Idaho Code § 7-701A was in reaction to the Kelo case.

**Senator Guthrie** said the Committee may hear from opponents today that takings for trails and greenways or bike paths should be a decision left to the local entities, but as with the other efforts in 7-701A, the decision about when eminent domain is appropriate is a decision left to the states. He said the Attorney General confirms that.

**Senator Guthrie** cited an example of why it is important to modify the bill is these kinds of takings are being seen more and more across the country. He said he understood that the Idaho Association of Counties was going to submit written testimony against the bill and he said he finds that interesting because other counties across the nation are actually opposing these takings and voicing their concerns. In 2010 a group went into the Rowan County, North Carolina Commissioners seeking support of a fifteen county Carolina Thread Trail. The Commissioners looked at that and not only rejected the request for support, but also passed a resolution to limit the power of eminent domain for takings because they had seen other counties allowing that and they didn't agree with it. **Senator Guthrie** quoted from the testimony at the Rowan County hearing, saying it mirrors his beliefs: "I don't know of anyone I have talked to that is against the greenway itself. What we are against is the methods that can be used, and have been used across the state, in order to get the property necessary for that greenway."

**Senator Guthrie** said that is how he feels, that he is not against greenways or those kinds of recreational opportunities; it is just the methods of property acquisition that he disagrees with. The second quote is: "I've been the victim of eminent domain twice and let me tell you, it is an unfair process. Not only do the ordinances of Rowan County need to be changed and strengthened, but the eminent domain laws of North Carolina need to be changed." **Senator Guthrie** said legislation is being considered in other states, including nearby Utah. In 2008, Utah passed a law almost identical to **S 1046**.

**Senator Guthrie** said there are those who favor the ability to take property and they say the landowners are fairly compensated, as they will receive market value. He said he guesses that is how some rationalize that it is fair to take someone else's property. He said, "Let's talk about market value. Imagine you bought your property in 2004-2005 and paid plenty for it so you could have privacy. The market tanks in 2006, 2007, and 2008. Your property is taken and you get the market value in a down market, and now you have untold numbers of people with access through your property." **Senator Guthrie** said the playing field needs to be leveled. He said his message is, "Negotiate, not take." He said if people know they have to negotiate, when subdivisions are planned and city planning is done, they will incorporate those walking paths and greenways in subdivisions and they will require the developer to recognize the need for those kinds of things and it will be from a non-takings kind of atmosphere. He said this is 'not' an anti-greenway issue, it is a private property rights issue, which he cares deeply about.

In closing, **Senator Guthrie** quoted from the Idaho Constitution Article 1 Section 1, which reads: "All men are by nature free and equal, and have certain unalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety." **Senator Guthrie** said **S 1046** aims to protect those private property rights as guaranteed in the Constitution, and he asked the Committee to send the bill to the floor with a do pass recommendation.

**Senator Hill** asked Senator Guthrie if there have been any specific instances in Idaho where eminent domain has been a problem or could be a problem. **Senator Guthrie** described a situation in Bannock County where there has been an effort to build a greenway along the Portsmouth River where they have talked openly about using eminent domain. He said there are about 28 property owners who don't want to sell and there has been significant pressure placed on those owners with eminent domain being considered as a tool. As for specific cases of where it 'has' been used, **Senator Guthrie** said he thinks it is rare to see documentation of these efforts, but the fact of the matter is, it is used as a threat, so people tend to yield before the process actually occurs. So, he said, the threat is very real.

**Senator Hill** commented that the Bannock County situation has been going on for 15 years or more without any eminent domain powers being used, and asked if threats have affected landowners' negotiations. **Senator Guthrie** replied yes, that is correct. He said this bill is really looking to the future where there is likely to be issues with takings and loss of private property rights. He said rather than wait until there are many takings happening, it is appropriate to look at what is going on now. He said the Utah legislation was prompted by takings that occurred for a trail. There is also a South Carolina case where some government entities and people started to rise up and say this is not appropriate. **Senator Guthrie** said this bill tries to preempt the issue before it gets out of hand. If it is a level playing field, it will be willing buyer, willing seller, and developers will have to plan trails and paths in their subdivision plans.

**Senator Werk** asked Senator Guthrie to describe what the issues have been over the past fifteen years for the 28 property owners in Pocatello. **Senator Guthrie** said the greenway was built over a number of years and they began in areas where they could get property more easily, whether purchased or donated. Their ambitions were focused on the areas where they could build. Then they started in places where they could not build and got to the end of the line, and now they are seeking to connect those ends through the middle. He said the reason eminent domain has not been used before now is because they were busy building where they could build.

**Senator Guthrie** said now they have hit a road block and they need these properties to complete it. Landowners have said they just don't want to sell. The properties lay in five, ten and twenty acre tracts where the property goes into the river. If that property along the river is taken from the landowners, their quiet enjoyment or their opportunity to privately enjoy the river, will be gone. Senator Guthrie said the reason eminent domain has entered the discussion the past few years is the developers have hit that road block.

**Senator Werk** asked how long the stalemate has existed. **Senator Guthrie** answered at least six or eight years, as it was an issue for discussion when Senator Guthrie was a county commissioner. He said he does not want to pin this legislation solely on the situation in Bannock County, because this is really about private property rights. He said the Bannock County trail developers have had ample time to exercise eminent domain, so whether they actually will or intend to, he doesn't know. **Senator Guthrie** said this is about seeing a need for something to protect private property rights in the future.

**Senator Werk** said when he sees this body trying to protect private property rights associated with specific elements, such as trails, paths, greenways and such, that as a cyclist, he starts to feel picked on. He said it seems Senator Guthrie is valuing a road more than a pathway for pedestrian use, because this legislation concentrates on that. **Senator Werk** asked why he should feel more peaceful about why Senator Guthrie objects to bicycle use of a pathway as opposed to building a road along the Portsmouth River and using eminent domain to put a road in there instead of just a path.

**Senator Guthrie** answered the reason the language was left in the legislation about being adjacent to a roadway is that it is sometimes necessary to yield for key infrastructure. He said when building gas lines or power lines along a road, they try to do their best to avoid takings, and when takings have to occur, he said he thinks "we all recognize it's for the greater good of public infrastructure." **Senator Guthrie** said if Idaho Transportation Department (ITD) comes in and says they need to take this land for a roadway, it didn't make sense to him to say they couldn't also have an extra five or ten feet for bike paths, because it would be in conjunction with a project that is appropriate for takings if necessary.

**Senator Werk** said what he just heard is that Senator Guthrie believes that roadways are key infrastructure, so the ability to drive is key infrastructure and serves the greater good, but is Senator Guthrie indicating in the entire state of Idaho, that having a walking path or a biking path or other trail does not serve the greater good, as it is not a key piece of infrastructure. **Senator Guthrie** said he believes trails as described in this legislation do not rise to the level of public infrastructure importance as do roads. He said, "With that said, that doesn't mean I don't think they aren't important, and the question is, do you believe that private property rights are more important than property being taken so someone can do recreation activities?" He said those are important but can be incorporated in other areas where consent is given.

**Senator Werk** said he assumed if he was inclined to send this legislation to the amending order to include roads in the same category of non-key infrastructure and not allow eminent domain for a road, that Senator Guthrie would not be amenable to that kind of motion. **Senator Guthrie** replied that assumption is a fair one, and he wouldn't take the Committee's time to read Article 1 Section 14 about right of eminent domain for public infrastructure, and no, it is not an amendment he could support.

**Senator Lacey** said he had been involved in the Pocatello issue for about 25 years, and they have used the 'threat' of eminent domain, but haven't used the process yet because they don't have the support of local authorities. He commented there may be times when a trail or walking path would be beneficial to the whole, such as a pathway to a school for children. He asked if it would be possible to put the term "recreational" or "for the safety of children" in this bill to make an amendment acceptable. **Senator Guthrie** said he would consider any amendments that the majority wanted to look at, but he said this might be getting down to over-thinking it a little bit. He said he appreciates the thought as he hadn't thought of it that way.

**Senator Lacey** commented that in his community, kids walk along the greenway to their charter school to avoid the main street, so he would like to include an exception in this bill for these circumstances. **Senator Guthrie** said he doesn't want to go down too many tangents, but it makes sense to him. He said it also would make sense that a private property owner would yield to that for that use. He said, "It still gets down to taking something from somebody, and that's a pretty big issue for me."

**Chairman Siddoway** noted many people were present to testify with about half an hour left in the Committee meeting and he would call on each person in order of sign-in. He asked guests to please keep their comments short and concise.

**TESTIMONY:**

Speaking in opposition to **S 1046** were **Heather Wheeler**, Executive Director of Community Transportation Association of Idaho (CTAI) (See Attachment 1); **Rodney Ashby**, City Planner with City of Nampa (See Attachment 2); **Lynda Clark**, Grant Writer with City of Nampa (See Attachment 3), **Elaine Clegg** of Idaho Smart Growth/City of Boise (See Attachment 4); **Cynthia Gibson**, Executive Director of Idaho Pedestrian and Bicycle Alliance (Alliance); **Jay Gibbons** of City of Meridian (See Attachment 6); **John Reuter** of Conservation Voters for Idaho; **John Evans**, President of Association of Idaho Cities/Garden City; **Jonathan Parker** of City of Caldwell; **Justin Ruen** of Association of Idaho Cities; and, **Jim Pace** representing himself. Unable to attend the meeting but submitting written testimony in opposition were Ken Harward of Association of Idaho Cities (See Attachment 7); Kerry Ellis with Idaho Association of Counties (See Attachment 8); and, William F Gigray, III with City of Caldwell Pathways and Bike Routes Committee (See Attachment 9.)

Speaking in favor of **S 1046** were **Dennis Tanikuni** of the Idaho Farm Bureau (See Attachment 5); and, **John Eaton** of the Idaho Association of Commerce and Industry (IACI).

First to the podium was Ms. Wheeler of CTAI. **Ms. Wheeler** said the mission of the CTAI is to advocate for and empower individuals and communities to develop transportation systems needed for economic vitality and quality of life. She said although rare, in some instances the use of eminent domain assists a community in that mission, and communities should have eminent domain available as a tool to develop the transportation infrastructure their community leaders and citizens desire. **Ms. Wheeler** said the CTAI opposes **S 1046** because paths are essential for the quality of life, they attract new business and tourists, and they help people get from point A to point B. She said there are safety reasons for having such facilities away from roads and highways. **Ms. Wheeler** said the eminent domain process exists to fulfill a mandate under the state and federal constitutions and property owners receive just compensation, as well as severance damages compensation for impacts on their ability to use the remainder of the property. She said this strikes the right balance by protecting the rights of property owners while ensuring that taxpayers are not cheated in the process. **Ms. Wheeler** said local officials should be trusted to make the right decisions for their communities, adding that local elected officials are reluctant to use eminent domain as they prefer to reach negotiated agreement.

**Vice Chairman Rice** asked to understand where Ms. Wheeler draws the line on eminent domain. He asked if the appropriate limit on people's property rights is "whatever the community wants as long as they compensate for the value of the property they take." **Ms. Wheeler** answered eminent domain is there for the greater good of the community, and if that community feels that is an infrastructure need they would like to have, then she believes that's why it is in the law.

**Mr. Ashby** said the City of Nampa has developed a master plan for the city with significant public input. He said the steering committee identified gaps in the pathway network. He said it is difficult to determine whether a greenway is for recreational purposes or transportation purposes. He said the federal agency from which the city receives funding has directed the city to develop more "multi-modal transportation options." **Mr. Ashby** said the city needs to consider the needs of all people, including under-served populations, including children under fifteen who do not drive but use pathways to get where they need to go. He said the existing legislation does quite a bit to protect private property rights. He said the City of Nampa has not used eminent domain for pathway condemnation, although it has used it for roadways.

**Senator Werk** asked Mr. Ashby if he would say pathways are critical infrastructure in certain circumstances. **Mr. Ashby** answered absolutely. He said their surveys show one of the gaps Nampa citizens would like to see filled is the "Stoddard Corridor" which would be a major connection to the downtown area where people could benefit with access to jobs and education.

**Ms. Clark** said it is important to look at trails and pathways as an essential part of a broader transportation network and not just recreational areas. She said the current practice in transportation development is multi-modal transportation, including biking, walking, transit and vehicular transportation. She said the city has been awarded through grant funding more than \$1.2 million for this purpose. There are almost 13 miles of multi-use public pathways in Nampa, and she said they keep seeking funding to fill gaps in the trail system, including connecting them to transit stops and retail centers, schools or community events. **Ms. Clark** said it makes no sense to single out pathways from being exempt from eminent domain procedures. She said unless there is an obvious abuse of power, why should states limit the tools available to local government to respond to the people of the community.

**Vice Chairman Rice** asked Ms. Clark to describe where she thinks the line is that an individual's private property rights are more important than the majority in their neighborhood, or vice versa. **Ms. Clark** replied that can only be answered in a specific situation. She believes in private property rights and has the experience of protecting those as a member of city council, but she said they also have to serve the greater good. She said eminent domain is a tool in the toolbox and should remain available.

**Ms. Clegg** said she contracts with the Idaho Transportation Department (ITD) to provide technical assistance on planning infrastructure and developing local policy for safe walking and biking routes for school children in Idaho. She is also a Boise City Council member. She pointed out that it has been a user group in Pocatello who advocated for the use of eminent domain on the greenway, but the local government has consistently refused to use it. **Ms. Clegg** said in her estimation, the legislation in **S 1046** is preemptive and sometimes it is wise to be preemptive, but she said not in this case. She said there is no evidence across the state of Idaho that local governments have misused eminent domain, and if there was evidence of misuse, she thinks the resolution would be to fix the process, not prohibit the use.

**Ms. Clegg** listed the communities she has worked in where they are looking for a safe and efficient way for kids to walk to school, which would not be recreational paths, but rather transportation facilities. She said the benefits include saving taxpayers' money by reducing bussing costs and gas emissions, promoting air quality and better health for students by reducing childhood early-onset obesity, all of which have a "public purpose." She said the state of Idaho's constitution makes clear that the preservation of the health of the citizens is one of the primary purposes for which eminent domain can be used. She said in many of the areas she has worked, paths have been developed that do not follow a roadway, and they often are a safer, more direct route. **Ms. Clegg** said it is a local and case-specific decision. She said Senator Hill had asked where is the line, and she said it is not only public purpose with support, but all other alternatives must be exhausted, then there is appropriate use of eminent domain.

**Ms. Clegg** said the Boise Greenbelt was created fifty years ago to increase property values, and the image of the river changed dramatically from unsightly and unpleasant with trash and animal waste to now being one of the premier locations in the city. Eminent domain was used only once in the history of the Greenbelt. Only one property owner refused to negotiate and she said he was fairly compensated. She said that eminent domain is to prevent one property owner from unjustly holding up a whole project. **Ms. Clegg** said the Greenbelt was envisioned as a recreational facility, but a report due out next week will show one location on the Greenbelt was used for transportation purposes 91,000 times. She asked the Committee to hold the bill.

**Mr. Tanikuni** came to the podium to share his support of **S 1046**. He said the Idaho Farm Bureau Federation (IFBF) is Idaho's largest general agriculture organization, with approximately 68,500 member families. He said of those, 14,500 are agricultural producers, so the IFBF represents about 58 percent of Idaho's farms in some way. He said private property rights, and possessing and utilizing private property, both real and personal, are very important to IFBF members. Their Policy 186 says, "...we oppose the use of eminent domain for recreational purposes, for private economic development or to expand the land holding of wildlife agencies..." He said the properties in question are either productive lands or lands enjoyed by the owner. He said an important point is that lands to be utilized for the trail system are not economically distressed nor are they a threat to human safety. **Mr. Tanakuni** said he thinks it is interesting that there is a stringent standard applied to cities that are going to provide a basic human need of shelter, but there is no standard for a recreational site.

**Mr. Tanakuni** said IFBF has nothing against bike or walking paths, and in fact has cyclists and triathletes among their members. He said he does acknowledge that eminent domain is a powerful government tool and he thinks it should be limited to purposes essential to the greater good of the general public. Therefore, he said, IFBF does not think the taking of an individual's private property for a bike path or hiking trail through eminent domain meets that objective. He said often the 'threat' of eminent domain is used to bring people to the bargaining table, and that is why this bill should become law. He asked the Committee to support **S 1046** and send it to the floor with a do pass recommendation.

**Ms. Gibson** stood next to express her opposition to **S 1046**. She said her organization represents those who have the right to choose, and also those who are not able to choose, alternative transportation. She said 29.8 percent of the American population is a non driver, by choice or not by choice, and she wants them to be safe. Non drivers are either too old or too young, disabled, have lost their right to drive, or perhaps choose not to drive.

**Ms. Gibson** said this includes Idahoans who walk or bike on trails, paths and greenways. She said the Alliance supports family values for those who choose to walk or bike their children to school safely, and this is often done by paths, greenways and trails. She said 83 percent of Americans want to maintain or increase funding to build sidewalks, bike lanes and bike paths.

**Ms. Gibson** said Idaho communities must have the tools they need to get the land they need, including the use of eminent domain. She said walking and biking are legitimate forms of transportation and infrastructure is needed for this type of mobility. She said maybe people don't want to walk or bike every day and maybe not for every trip, but they do want that option. She said this bill specifically addresses recreational use of trails, but she also sees community members using these trails for transportation not just for recreation. She said wouldn't it make more sense to keep cyclists and walkers away from busy roadways by maximizing the tools communities can use to acquire this land to build pathways on areas not close to motorized vehicles. She said that as a motorist, she would prefer to not have cyclists and walkers close to her motor vehicle, and as a cyclist, she would prefer to have distance between herself and motor vehicles.

**Vice Chairman Rice** asked what percentage of the population she thinks it takes before someone has the right to decide to walk across their neighbor's property.

**Ms. Gibson** said that is a really good question. She said she's a property owner here in Idaho and she doesn't mind people walking across her property, but she knows there are those who do. She added she believes that local governments should be able to make that decision as far as taking her private property to use it for the common good of society. **Ms. Gibson** said she cannot answer Vice Chairman's Rice question specifically with a percentage, but what she does know is that as a society they should be encouraging community members to be able to use whatever form of transportation they choose to use, and she believes local government should have all the tools to be able to do that. She said her understanding is eminent domain is not used a lot but it's a tool local governments should have and should continue to have.

**Mr. Gibbons** approached the podium. He said as the pathways project manager for the City of Meridian, he is here to speak against **S 1046**. He noted he is a member of the IFBF, and he opposes this bill. He said they have a pathways master plan adopted since 2007 that is a network of connected pathways throughout the city. **Mr. Gibbons** said the City of Meridian has not used eminent domain to this date, and if he does his job right, he won't have to. The pathway network uses easements instead of property ownership. He said his answer to Vice Chairman Rice's question to Ms. Gibson is that it requires the property owners' permission. **Mr. Gibbons** said alternative transportation is huge these days, especially with gas prices. He said eminent domain should be used as a last resort, but it is a tool that should be in the tool box to be used only if absolutely necessary.

**Vice Chairman Rice** asked at what point would Mr. Gibbons consider it absolutely necessary to take someone's property to use for a walking path. **Mr. Gibbons** replied with an example. He said the pathway master plan has a Rails Trail that follows the existing rail corridor through the city from Nampa to Boise. He said they have discussed the option of partnering with other cities and the rail entities to pursue that. The issue is if they cannot work out a solution incorporating the pathway inside the existing rail corridor right of way, they would have to go across the property just north of the right of way, which would require permission and easements from upwards of one hundred landowners, some of which are residential lots and others are undeveloped parcels.

**Mr. Gibbons** said if he has a six-mile pathway with 92 pieces of property whose owners are on board, and have only one or two who absolutely won't agree despite negotiations, eventually it would lead them down the road to the use of eminent domain. He said his job is to sit at the table and negotiate and so far he has been successful.

**Mr. Reuter** said he was on the Sandpoint City Council where he had to vehemently argue against the use of eminent domain for a greenway project along their lake. He said instead they entered negotiations and made fair deals with the property owners. He said he still opposes this bill. He said eminent domain should be a last resort after they've tried everything else, and there still has to be a 'high enough public good' to justify the use of eminent domain. He said Idahoans have been careful with this power and have not used it in an abusive way. He said he wanted to tackle the idea of a road versus a pedestrian connection. He said he personally believes a pedestrian connection that allows kids to get to school safely is just as important and a public good as the road he drives to work.

**Mr. Evans**, Mayor of Garden City, approached the podium. He posed the question: around the whole state, are greenbelts the same or the uses or definitions of how these facilities are used the same, and he answered no. The Boise Greenbelt has striped lines and speed limit signs, because it is a transportation corridor. He said he wanted to emphasize the hesitance to use eminent domain for this purpose. He said he consulted with Ken Harward of Association of Idaho Cities, and they concluded there have been only two uses of eminent domain in Idaho for a pathway or greenway purpose. **Mr. Evans** cited the most recent use in which private property was needed as a landing point of a pedestrian bridge to connect the north and south side of the Boise River. The property was held in a homeowners association and the president of the association, who happened to be an attorney, recommended that the city condemn the property, and it was stipulated by both sides and is closed, recorded and done. He said the considerations are different in rural and urban areas. **Mr. Evans** said his final comment is that he is a member if the IFBF and he opposes this bill.

**Mr. Parker** spoke next in opposition to **S 1046**. He said specific to the City of Caldwell, many of the city safe routes to school and pedestrian bicycle safety planning involve detached pathways away from traffic influences. He said the City of Caldwell believes it is critical to prevent this exemption. The Indian Creek project did not use eminent domain in the development process. He said this is a local issue and this legislation sets policy for the entire state, so this one-size-fits-all approach is not appropriate, and it is a solution in search of a problem.

**Mr. Ruen** approached the podium and said he believes the other speakers have covered the main points, which are also summarized in the letter from the Association of Idaho Cities. (See Attachment 7.)

Next to the podium is **Mr. Pace**, who said he is a citizen who believes bicycle pathways 'are' just as important as roads, and they 'are' key infrastructure. He said just as eminent domain is used to support other key infrastructure projects that give water, power, natural gas and a way to get a vehicle there. He said the bike path he uses to get to work every day is a key piece of public infrastructure. They're not just recreation.

**Mr. Eaton** approached the podium. He said he represented the Idaho Association of Realtors (Association). He said this issue came up with basically the exact language and passed in the House of Representatives in 2011. He said the Association did support it then. He said they will be reviewing it at their meeting tomorrow and he expects they will support it again. He said eminent domain is a very important property rights issue, and first and foremost they care about property rights.



**Mr. Eaton** said the one thing they see most often is "this is not something we use very often, it is our last resort." He said it's not that they 'use' it, but rather the 'threat' that they 'can' use it that gets the action done. He said he asks for a do pass recommendation.

**Vice Chairman Rice** asked if property values could be affected for an area in the city that had long-standing discussions of eminent domain hanging over it. **Mr. Eaton** said yes, that would affect values in a negative way.

**Senator Werk** asked if Mr. Eaton was offering his do pass recommendation as himself or as representing his organization. **Mr. Eaton** said his organization has not taken a position yet, but it did take a position last time on the same language, as far as he could remember, and he presumed it would again. **Senator Werk** asked if the organization's legislative committee composed of the same people as last time. **Mr. Eaton** said no, it is not.

**Senator Guthrie** returned to the podium for final comments. He said he bought some land a few years ago and paid more for it than it was worth for what he's doing with it. Part of the reason is so he can have a guarantee of privacy, so in his opinion, there is no amount of money that is just compensation. This bill helps protect the property owner. **Senator Guthrie** said a common theme throughout the testimony is that local governments need this tool, and he said something needs to be done to set the tone differently about how property is acquired in the future for these kinds of activities.

**Senator Guthrie** shared some ideas on what other communities do instead of concentrating on eminent domain. He cited 'Access Yes' which is a program facilitated by Idaho Fish and Game, in which a property owner gives permission for hunters to go through their land to reach government land; Landowner Appreciation Program through Fish and Game, where landowners are willing to let people hunt on certain acres of land, and they get to put in for a controlled hunt tag; conservancy groups are purchasing land all around the United States so they can do with that land what they want; hunting groups buy up tracts of land and charge membership so they can go hunt and have access to the land. He said these are all examples of a level playing field with a willing seller and willing buyer.

**Senator Guthrie** next addressed the issues of safety. He said he wants to go on a trip and the brakes on his car are not very good, so "would you lend me your new Mercedes so I can feel safer on my trip." He said in regards to recreation, "would you lend me your Harley for the weekend so I can go have a good time on the weekend." He said that is what is being asked of private property owners, to let others go through their land for recreation and activities. He said it's going from pristine property where one has access to their streams and rivers and quiet enjoyment, and now 91,000 people might be travelling through their property.

**Senator Guthrie** commented that much has been said about eminent domain not being used that much. He said eleven years ago, a young man came in to his store and robbed them by putting a gun in his sister's face. He didn't fire the gun, so technically he didn't use it, but he 'threatened' to use it, and because he did, they gave him what he wanted and he went on his way. **Senator Guthrie** said one doesn't have to actually 'use' eminent domain to use it. He said the 'threat' is there, and when that card is in the deck, there cannot be a level playing field or fair negotiations. **Senator Guthrie** said he appreciated the Committee's favorable consideration of a do pass recommendation for **S 1046**.

**MOTION:**

**Senator Bayer** moved to send **S 1046** to the floor with a do pass recommendation. **Vice Chairman Rice** seconded the motion.

In discussion, **Senator Bayer** said he thinks there has been much valuable dialog in this debate and he respects the positions expressed. He said he had deliberations on this same issue in the House Local Government Committee in the past. He said the key points were negotiations in good faith mean parties have balanced understanding and as Senator Guthrie mentioned, it is not pushing a nuclear button, but having 'access' to eminent domain that changes the dynamics of that transaction between that power and property rights. **Senator Bayer** said having that tool in the tool box leads to justification, which in this case is metrics, and the way the language is phrased for the metrics, they don't rise to the unilateral power of eminent domain. He said Senator Guthrie has in good faith tried to accommodate the practicalities with the language in the legislation. **Senator Bayer** said he appreciates the communities and their efforts in their infrastructure, and it seems like communities are giving great case examples of collaboration on a voluntary basis. He said he thinks having that tool requires a very measured approach in metrics and he sees where they apply in infrastructure. He said he doesn't question a project's merits, just that it doesn't rise to the occasion of eminent domain.

**Vice Chairman Rice** said he thinks that sometimes the needs of the communities or a neighbor are important. He said he had a situation where the city needed to put in new storm drain and their easement was across a neighbor's property, directly under his new shed. He said he gave the city an easement for free so they could avoid needing to move or rebuild the shed. He said he did that because he thought it was the right thing to do for his neighbor. It was his property so he could do with it what he wanted. **Vice Chairman Rice** said it is inappropriate to say just because the neighbors would really enjoy someone's property for their recreation that they have a right to take it. It is an inappropriate use of the power of government. It distorts the relationship of the citizen to their government. He said in our nation, that relationship is not supposed to work that way. If there is a 'real serious' need, that is when there is a proper use of a power like eminent domain, where the individual's private property rights are trumped. Trails and bike paths and horseback riding paths are just not at that level. **Vice Chairman Rice** said he thinks putting a limit on and limiting the ability to even 'threaten' under these circumstances is an appropriate limitation to place.

**Senator Hill** said he will be opposing the motion. He said over the years a lot of people have come to him saying they're not happy with their city council or county commissioner, so they come find a legislator and ask them to pass a law to what they can or cannot do. He said that's how local officials' authority is chipped away. He said he trusts local officials to make decisions and do their jobs. He said he believes in property rights, but he also believes in local control. **Senator Hill** said there may be an unintended consequence to this legislation, as he has had clients over the years who have requested that the city or county 'condemn' their property and take it by eminent domain because there is preferential tax treatment for that. When one sells a piece of property, they pay taxes on the gain. If it is condemned, it becomes voluntary conversion under Section 1033 of the Internal Revenue Code and they have two to three years to replace that property with similar property and avoid paying tax on that. That option to taxpayers would be completely taken away with this pathway circumstance.

**Senator Lacey** said he would confess he is a cyclist and uses pathways and roadways, but he also believes in personal property rights. He said he agrees that possibly the use of trails for recreation may not be a proper use of eminent domain. He said the pathway or byway may be beneficial to the community as a whole, whether it be safety of children or as a main corridor for travelling back and forth to work. He asked if **S 1046** could be sent to the amending order to insert the word "recreation" into the legislation. Upon clarification of the process, **Senator Lacey** made a substitute motion.

**SUBSTITUTE MOTION:** **Senator Lacey** moved that **S 1046** be sent to the amending order to insert the word "recreation" or phrase "recreational use." **Senator Werk** seconded the motion.

**Senator Vick** asked for clarification that if the substitute motion fails, the Committee returns to the original motion. **Chairman Siddoway** said that is correct.

**ROLL CALL VOTE:** **Chairman Siddoway** called for a roll call vote on **S 1046**. On the substitute motion, **Chairman Siddoway, Vice Chairman Rice, and Senators Hill, McKenzie, Vick and Bayer** voted nay. **Senators Werk and Lacey** voted aye. Senator Johnson was absent excused. The vote was 6 nay, 2 aye, and the substitute motion failed.

**ORIGINAL MOTION:** **Chairman Siddoway** returned the Committee to the original motion, in which Senator Bayer moved to send **S 1046** to the floor with a do pass recommendation. The motion was seconded by Vice Chairman Rice.

In discussion, **Senator Vick** commented on how the argument for trusting local government was made over and over again. He said this hasn't happened in here in Idaho, but in the Kelo decision, the local governments did not protect the homeowners. Those homeowners were kicked out of their houses, businesses were moved and the development never took place and now that property is a dump. He said their city council didn't protect them, neither did their state legislature, nor the Supreme Court. **Senator Vick** said he believes that when there is an opportunity to protect private property rights, they need to use that opportunity, and that is why he will support this motion.

**Chairman Siddoway** welcomed back Senator Johnson, who was excused temporarily to attend another meeting, and informed him of the status of the vote.

**ROLL CALL VOTE:** **Chairman Siddoway** called for a roll call vote on **S 1046**. On the original motion, **Chairman Siddoway, Vice Chairman Rice, and Senators Vick and Bayer** voted aye. **Senators Hill, McKenzie, Johnson, Werk and Lacey** voted nay. The vote was 5 nay, 4 aye, and the motion failed.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:52 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, February 07, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Review of minutes from January 23, 2013	<b>Senator Bayer</b>
	Review of minutes from January 24, 2013	<b>Senator McKenzie</b>
	Review of minutes from January 29, 2013	<b>Senator Vick</b>
GUBERNATORIAL APPOINTMENT	Confirmation Hearing for the Appointment of Ken Roberts to the Idaho State Tax Commission	<b>Ken Roberts</b> , Idaho State Tax Commission
<a href="#"><u>H 52</u></a>	Relating to the Circuit Breaker Property Tax Relief Program	<b>Robert Aldridge</b> , Trust & Estate Professionals of Idaho, Inc.
<a href="#"><u>H 20</u></a>	Relating to the Tax on Motor Fuels	<b>Michael Chakarun</b> , Idaho State Tax Commission
<a href="#"><u>H 24</u></a>	Relating to Sales Tax Revenues used for Elections	<b>Alan Dornfest</b> , Idaho State Tax Commission
<a href="#"><u>H 25</u></a>	Relating to Property Tax Administration and certain technical corrections	<b>Alan Dornfest</b> , Idaho State Tax Commission
<a href="#"><u>RS21839</u></a>	Relating to Solid Waste Disposal	<b>Senator Werk</b>
<a href="#"><u>RS21898</u></a>	Relating to Charges for Motor Vehicles Traffic Incident Responses	<b>Chairman Siddoway</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, February 07, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:03 p.m.

**MINUTES:** **Chairman Siddoway** said the Committee had three sets of minutes to review. **Senator Bayer** moved to approve the minutes of Committee meeting from January 23, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**. **Senator McKenzie** moved to approve the minutes of the Committee meeting from January 24, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**. **Senator Vick** moved to approve the minutes of the Committee meeting from January 29, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT** **Chairman Siddoway** invited Ken Roberts to the podium for the consideration of his gubernatorial appointment to the Idaho State Tax Commission (Commission.) **Mr. Roberts** introduced his mother, Louise, and thanked her for all she has taught him over the years. He also thanked Governor Otter for his confidence in him. **Mr. Roberts** said he is someone who enjoys tax work and tax policy and hopes to administer taxes in a way that is fair, equitable and long-lasting for the citizens of Idaho. He thanked the legislators with whom he had the pleasure of serving Idaho for many years and his fellow Commissioners with whom he has been working for the past several months. **Mr. Roberts** said he would stand for questions.

**Senator McKenzie** said he understands that each Commissioner has oversight of a different area of taxation, with Mr. Roberts' being income tax. **Senator McKenzie** asked since Mr. Roberts' background is not really in tax or accounting, how may that benefit him as a Commissioner with oversight in that area. **Mr. Roberts** answered that as a young person, his mother taught him about bookkeeping and he ran his own business for many years, prepared his own tax returns and kept appreciation schedules. As things got more complicated, he sent them to a professional. He said with his background, income tax is probably one of the areas where he has the most to learn. It was a great learning experience sitting on the House Revenue and Taxation Committee working on many tax issues. He said he is in no way an expert in those areas, but he has a basic understanding. He said he has spent a lot of time in the property tax realm as well, and some in sales tax, too.

**Senator Johnson** asked for Mr. Roberts' thoughts on implementing tax policy fairly. **Mr. Roberts** answered he thinks it is important that the Tax Commission stay ahead of the curve and nudge tax policy forward to keep it fair. **Senator Johnson** said he has known Mr. Roberts for upwards of 13 or 14 years, and in fact has been a guest at his home, and he knows him to be a very fair man. He said he is honored to have him serve the state in this capacity.

**Senator Bayer** said he also goes back a long way with Mr. Roberts and they have agreed to disagree, co-sponsored agreements, amended one another's measures, and been the demise of others, but it was always deliberative and constructive, and better products came out of the process. **Senator Bayer** said he appreciates the opportunity to express his support.

**Chairman Siddoway** asked Mr. Roberts if he has come across anything during his time since being appointed to the Commission that he would like to see changed, and if so, is he willing to share some things that might make the Commission more effective and make it a better department. **Mr. Roberts** said he has spent a lot of time listening and keeping his eyes open in the past six to seven months, and there are a couple things he firmly believes will need to be addressed as a state when it comes to some taxation issues.

**Mr. Roberts** said within the Commission structure, each Commissioner has an oversight area, and it is good to have that plurality of leadership. In statute and in the Idaho Constitution, the forefathers set forth a structure that is a balanced system for looking at different methods and checkpoints in taxation. If someone doesn't agree with the findings of an audit, they're allowed to appeal it at several different levels. In recent years, this legislative body put some parameters on Commissioners signing off on certain settlements, which he thinks was wise. From that, there is another level of checkpoint through the Board of Tax Appeals, and then they can go through the courts if they want after that. **Mr. Roberts** said he thinks those are all good measures to have in place, even though at first he thought it was a very long process. However, now he realizes it takes time to develop arguments and background that taxpayers and Idaho both need to bring a case to fruition.

**Mr. Roberts** said something dawned on him over the past year that he thinks the state of Idaho needs to consider. He said he thinks Idaho should develop a policy arm within the legislature or administrative executive branch that can take the time and seriously walk through Title 63 of Idaho Code. He said some of the tax policy is in its 150th year life span. He said he brings it up because Idaho's economy is very different today than it was 150 years ago, when Idaho's property taxes were from natural resources, agriculture, timber and mining. In the early 1900's, there was a pots and pans tax, on household goods, which has since been removed. Income tax was instigated in 1933. In 1965, sales tax came and inventory tax went off the books. In 2013, the debate is the remainder of the personal property tax. **Mr. Roberts** said it could be called the pots and pans tax, then pigs and chickens and now tables and chairs tax. He said it's interesting to see how the economy has changed through the years, noting that if someone had told him thirty years ago that you could buy things over an electronic device held in your hand, he'd have said, "What are you talking about?"

**Mr. Roberts** said there has been so much change in the way business is transacted in this country and around the world in recent years and the tax code needs to be looked at. He said tax code has been piece meal and patched together for so long, he believes there needs to be a state government, committed group that will go through the tax code and point out inconsistencies and irregularities and streamline it. With that, he thanked the Committee members for their consideration.

**Chairman Siddoway** thanked Mr. Roberts for being here and said the Committee will vote on his appointment at the Committee meeting next Tuesday.

## **H 52**

**Chairman Siddoway** welcomed to the podium Bob Aldridge of Trust & Estate Professionals of Idaho, Inc. to present **H 52** relating to the Circuit Breaker Property Tax Relief Program. **Mr. Aldridge** said the organization he represents is a nonprofit group that does cleanup in the Idaho probate and tax codes. He said they have a long relationship with the Tax Commission in working out changes to rules and some other legislative changes.

**Mr. Aldridge** said the general subject of **H 52** is deferred property taxes. He said it was established around the year 2000. He said "circuit breaker" was a total forgiveness of tax with an income cap of \$28,000. The deferred property tax was for those who made more than \$28,000 up to \$40,000 in 2007 (now adjusted to \$41,000.) The deferral would become a lien against the property that would come due normally upon the death of the person. That program was set up with initial guidelines and relatively small numbers of people apply. **Mr. Aldridge** said there is now a fair amount of confusion of the terms.

**Mr. Aldridge** said to clarify, the deferral does not remove anything from the existing tax districts as there is a state fund that reimburses them, so local districts are still whole. The state is paid back by the estate when the person dies or when the house is sold and property taxes are paid. The problem in Idaho Code § 63-716 is the lien for deferred property tax has priority from the date of its recording and does not become a priority lien. Therefore, the deferred property tax lien is behind any existing encumbrances. He said it is highly important that there is enough equity in the property to give assurance of future payment of the taxes. However, property values may decrease, so there must be some remaining net equity after the deferred taxes become a lien. However, the existing law only states that the property must have 'sufficient equity' without any definition of that term. The practice of the Idaho State Tax Commission (Commission) has been to use the assessed value, but that is not specified in statute.

**Mr. Aldridge** said another problem is that there are types of loans, especially reverse mortgages and lines of credit, which are not 'fixed' in their total potential amount. Reverse mortgages in particular may end up exceeding the value of the property, especially in a declining real estate market. However, no guidance is given in the existing statute for how to treat such loans. The practice of the Commission has been to deny applications where there is a reverse mortgage, and this denial was recently upheld by a Board of Tax Appeals decision as appropriate and also that the use of the assessed value was appropriate.

**Mr. Aldridge** explained that because this practice is not set out in the statute, a relatively high percentage of applications are denied because of reverse mortgages, because applicants are not aware that the reverse mortgage will cause the denial. This ties up staff time, and in the case of an appeal, legal time as well. It also involves the applicant in unnecessary and frustrating proceedings.

**Mr. Aldridge** said **H 52** offers a solution to these problems. He said the bill amends the statute to provide a definition of "sufficient equity" to mean "(a) the property is not security for a reverse mortgage, or a home equity loan or line of credit, or any similar loan or encumbrance; and, (b) the amount of all encumbrances of any nature on the property which are superior to any liens for deferral, plus the amount of property tax and interest previously deferred on the same property, does not exceed eighty percent (80%) of the current year's market value for assessment purposes."

**Mr. Aldridge** said if the property has a reverse mortgage or home equity loan or line of credit, or any similar loan where the amount is not fixed, there will not be 'sufficient equity.' In most cases, the reverse mortgage could be used to pay the taxes in any event, as could lines of credit. If the loans are maxed out, they can be converted to fixed amount loans and the application would not automatically be denied.

**Mr. Aldridge** also pointed out that the bill would clearly define the process and provide for the use of the current year's market value for assessment purposes. He said the applicant automatically knows this value and can compute, accurately and easily, whether there is 'sufficient equity' in the property before submitting the application.

**Mr. Aldridge** said the rest of the changes in the bill are just housekeeping deletions to remove duplicate language, since all the relevant provisions are now in the definition. He said the bill does not have a negative fiscal impact. Rather, it will eliminate inappropriate applications and save staff time.

**Senator Werk** said it seems the program is not well utilized and perhaps this clarity will help it be utilized more. He asked about when people use this deferral year after year they would "run on the shoals" when this isn't okay anymore. He said the section under 2c limits deferrals on the same property not to exceed 50 percent of the proportional share of the market value, and this bill eliminates that section and now makes it 80 percent. **Senator Werk** asked if that opens up the process to additional added deferrals that create a pattern that may not be a wise investment.

**Mr. Aldridge** said the income range for applicants on this program is pretty slim, from \$28,000 to \$41,000, which is why there are a low number of applications, besides it not being well publicized. **Mr. Aldridge** said when he first read the language, he was unsure of its meaning too, which is why he suggested making a simple definition. He said it really fits with what the Commission has been looking at, which is "do we have enough equity and how do we determine that."

**Senator Werk** pointed out that Section 4 deals with the idea that one has made a deferral but now they have found out that conditions have changed and now have to undo the deferral, and he asked if that is correct. **Mr. Aldridge** answered that yes, the criteria have been simplified. He said he doesn't think anyone has used this provision, because no one has gone through the whole process, meaning no one has died with the provision in place. He said it remains to be seen how it works through to the end of the process, and he said he may be back in the future.

**Senator Hill** said he doesn't do this very often, but he wanted to say he has worked with Mr. Aldridge for a long time, saying Mr. Aldridge has worked tirelessly to make Idaho Tax Code better over the years, and **Senator Hill** thanked him for his efforts and for being one of the smartest people he knows.

**Vice Chairman Rice** asked if there has been discussion with county assessors and county commissions and others that receive property taxes, in regard to real property tax deferrals, specifically with the 80 percent value. He said it seems there was some looseness before that gave them discretion for deferrals being good risk v. bad risk, and with the last market downturn, values went down much more than 20 percent in assessed values.



**Mr. Aldridge** said he has a two part answer. He said yes, he did run this past assessors to get their reaction and they had no problem with it. He said they thought it was easy and it gave them clarity when they were talking with potential applicants. Secondly, he said local districts are 'made whole' anyway, because they get the money they would have gotten if there wasn't a deferral, so it doesn't change their income at all. He said the state level is where the affect is felt by how much that fund will have to pay out and eventually recover. This does have to be real property and the primary residence only, which models the same criteria as the circuit breaker. He said part of the other problem is that the Commission has tried to move away from subjective tests, because too often those situations turn into who knows who and who is a good friend, or at least there are accusations of the appearance of impropriety. **Mr. Aldridge** said now, applicants have to meet the test and recognize if the economy tanks, their property won't 'tank' as much as someone else's. He said the best approach is a straight forward mathematical approach.

**MOTION:**

**Senator Werk** moved to send **H 52** to the floor with a **do pass** recommendation. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**H 20**

**Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission) to introduce **H 20**, relating to the Tax on Motor Fuels. **Mr. Chakarun** stated the bill makes two changes to Idaho Code § 63-2423. Section 1 of the bill clarifies § 63-2421(1)(c) to allow for credits or refunds for "gaseous special fuels" rather than the generic special fuels category. He said the term "special fuels" is broadly defined to mean diesel fuel and gaseous fuels such as propane, natural gas, compressed or liquefied gas. Gaseous fuels are petroleum products which are in a gaseous state at 60 degrees Fahrenheit and at standard pressure.

**Mr. Chakarun** said Section a and b relate to diesel fuel refunds. Section c was intended to pertain to refunds that relate to only gaseous fuel refunds. Users of these fuels pay tax by purchasing a permit, in the form of a decal, whose fees are set by a schedule, based on the weight of the vehicle. He said this bill makes this distinction between filing refund claims for diesel and refund claims for gaseous fuels by adding the word "gaseous" before "special." It also clarifies that the fuel be placed into the main supply tank of the vehicle to avoid any confusion.

**Mr. Chakarun** said Section 2 of the proposal gives the Tax Commission the authority to sell gaseous fuel permits. He said this will improve customer service by making the permits more available to the public and lessen the chance that the owners of the vehicles will use fuel from nontaxable sources if they can't find the permit distributor. **Mr. Chakarun** said some permit distributors only sell permits for use on their own fleets and not to the general public, so the agency believes it will not be in competition with them. He said the bill makes no change to the existing rates of tax and does not impose new fees on consumers.

**Chairman Siddoway** said he assumes the gasses being discussed are they ones they are all familiar with, such as propane, butane, methane, but some might be nitrous oxides, or the kinds of fuels used more in racing machines or snow machines where they want a little extra bump. He asked why these are even licensed vehicles and not just incorporated in registration. **Mr. Chakarun** said he is not sure of the answer to that, but these types of fuels are not for on-road vehicles. What they are addressing is the type of fuels, like flex fuel vehicles that can run on natural gas, and they can buy a decal instead of paying tax at the pump. He said they're not getting at the nitrous oxide type of fuels.

**Chairman Siddoway** asked if there is a better way for those alternative fuel vehicles, or if this is the most efficient way to collect the tax to help with road issues, and if so, where does that tax go. **Mr. Chakarun** answered the tax goes to the highway department for maintaining and building roads. He said the bigger question he thinks the Chairman is asking is if more vehicles are becoming fueled by alternative sources, is this the right mechanism to use anymore, and he answered probably not. He said they're not in the position yet to start addressing that, but that is something the legislature may want to look at seriously in the coming years.

**Senator Hill** asked if the distributors make any profit off the sales of permits and if the Commission will get any grief for taking over those sales or is it just more of a nuisance for them. **Mr. Chakarun** replied the Commission believes it is a nuisance for the distributors. He said they may charge a small administrative fee to cover their time spent to fill out paperwork and send the money down to the state. He said they're not expecting a lot of use of this, but the Commission wants to make sure people have an alternative if they cannot find a distributor in their area.

**Senator Hill** asked what process the Tax Commission is going to use to handle the sales of permits. He asked if it will require more resources and staff to process those, and if they will be available online via credit card or will they have to find a Tax Commission office. **Mr. Chakarun** said the Commission will have to set itself up as a distributor of these decals which will involve some bookkeeping. He said it will probably sell them online, whether or not it's through the Idaho Portal, but they anticipate being able to sell them through the mail if the taxpayer requests. He said it will be a little bit of a burden, but not insurmountable nor very costly.

**Chairman Siddoway** asked how is the general public, who purchases these alternative fuel vehicles, going to know they are obligated to have this decal. **Mr. Chakarun** answered the Commission will put information on its website to notify them and advise them where they can buy these decals. They can still get by without them, but they will pay at the pump every time they fill up. He said the decal short circuits that process so it should be a benefit to those folks.

**Senator Rice** asked about a section that refers to fuel being placed in the 'main supply tank' of the vehicle and how does that affect rigs with two tanks. **Mr. Chakarun** replied that if the two tanks are joined, it would be permissible.

**MOTION:**

**Senator Hill** moved to send **H 20** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**Chairman Siddoway** asked for and received the Committee's unanimous consent to have a typographical error in **H 20** corrected. The word 'second' was missing the letter 'e' and the Committee Secretary has notified the Senate Secretary, who has notified the House.

**H 24**

**Chairman Siddoway** invited to the podium Alan Dornfest of the Idaho State Tax Commission (Commission) to share **H 24** relating to Sales Tax Revenues used for Elections. **Mr. Dornfest** said the bill deals with a small correction to the sales tax distribution formula. He said in FY 2011 the state appropriated money for election consolidation from the sales tax account. There was an extra \$200,000, but the statute didn't say which way to distribute it. The Commission discussed it with the Association of Idaho Counties (Association) as they sponsored the original statutory change that provided for this. He says he has a letter from the deputy director of the Association saying they agreed to distribute it based on population in each of the 44 counties. There was a temporary rule in place to describe that. **Mr. Dornfest** said this bill gives clear direction in statute that any increase

resulting from any Consumer Price Index adjustment will be distributed according to each county based on population.

**Senator Hill** asked how and when is the counties' population being determined. **Mr. Dornfest** answered they determine it by using the "latest estimate" which is an official word in the Census Bureau. It is not from the last decennial (ten year) census.

**Chairman Siddoway** stated he understands the counties are the ones who asked for the distribution in this way, but would it be more fair, or perhaps advantageous, for the smaller counties if the money was distributed both under population and the 1/44th method. **Mr. Dornfest** said clearly it would be advantageous to not necessarily smaller counties, but to non-growing counties, because some small counties could be in growth mode. However, he said, he discussed it with all the county clerks in the state for nearly two years, as well as the Association, and he has not had anyone suggest this wasn't the best way to do it.

**MOTION:**

**Senator Johnson** moved to send **H 24** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**H 25**

**Chairman Siddoway** asked Mr. Dornfest to continue with the next bill on the agenda **H 25**, relating to Property Tax Administration and certain technical corrections. **Mr. Dornfest** said the bill makes changes to several sections of property tax law. He said in most cases, the changes just clarify current procedures, which will help taxpayers, Commission administrators or taxing districts.

**Mr. Dornfest** said this bill puts several property tax related topics together, so there are six different sections. He described that Section 1 adds a requirement for taxing districts to include contact information when submitting documentation for boundary changes or when forming. This will make it easier for Tax Commission staff to communicate with such taxing districts when there are confusing elements or discrepancies of their documentation.

**Mr. Dornfest** outlined that Section 2 corrects a reference date that was inconsistent between two statutes: homeowner's exemption and occupancy tax. He said occupancy tax is a prorated tax so when someone builds a home during the year and they move into it on July 1, then they pay tax on the home for half of the year. That person is also eligible for the homeowner's exemption. The language in statute said occupancy as of January 1. That deadline went away about ten years ago, so this statement of requirement is invalid. This change in Section 2 makes the laws consistent.

Next, **Mr. Dornfest** described that Section 3 amends Idaho Code § 63-509 and clarifies the requirement for abstracts (a summary of the assessment roll) to include increment value by category for property within urban renewal allocation areas. The information is needed to make sure levies are set correctly. All of the information being required is currently reported by each county, and they have been complying with this requirement for a long time, but the language in the statute became unclear in some amendments a few years ago. This change makes it clear that the information required on the abstract is the increment value in the revenue allocation areas. There is no new requirement being imposed in this statute.

**Mr. Dornfest** said Section 4 provides that appeals of recovery of improperly granted homeowner's exemptions are made to the county board of equalization, rather than the county commissioners. This change is being made to ensure that taxpayers may further appeal the county's decision to the State Board of Tax Appeals. Under current law, the Board of Tax Appeals has refused to hear appeals from county commissioner decisions, and **Mr. Dornfest** said the Commission did not feel that was the intent of the statute, so the change would ensure taxpayers' rights to such an appeal.

**Mr. Dornfest** outlined how Section 5 ties filing deadlines for the "circuit breaker" property tax reduction program to the Internal Revenue Service (IRS) filing deadlines with respect to April 15. In the past, the IRS has extended the April 15 date, causing confusion for circuit breaker claimants who were not similarly granted the extension. Current statute has an absolute deadline of April 15 and if that fell on a Saturday or Sunday, the deadline would go to the following Monday. However, **Mr. Dornfest** said, in recent years, the IRS has changed the filing deadline for income tax to even later days, and the Commission does not have the ability under circuit breaker statute to do that, even though the state of Idaho complied with the federal changes for filing income tax returns. He said it became so confusing that even an accountant made a mistake on the deadline and paid the fine for the taxpayer. Therefore, this change will allow the Commission to change the filing date to correspond to the IRS deadline if the IRS changed it from April 15.

Finally, Section 6 deals with Idaho Code § 63-810. **Mr. Dornfest** said this section extends the time for discovery of erroneous property tax levies. This pertains to levy errors not of a substantive basis, but of a ministerial basis, such as failure to correctly assign property values to the proper taxing district or mathematical errors in levy calculations. Current law requires discovery by January 30, which is only five or so days after taxing districts receive first payment from counties. The change gives taxing districts an additional two weeks within which such discovery can occur.

**Mr. Dornfest** described how the Commission made a mistake a few years ago, when they took the amount of operating property in public utilities and railroads and apportioned it back to the tax districts throughout the state. He said they took the amount of value that was to be distributed to the large Mountain Home Highway District and mixed it up with the small City of Mountain Home. They gave the big value to the small place and levies were set too low. The more value one uses, the lower one sets the levy.

**Mr. Dornfest** said fortunately, the Commission learned of their mistake before the January 30 deadline and the City was able to redo the levies, which otherwise would have cost them more than \$470,000. Counties collect money around December 20, the due date for property taxes. They will hold the funds for about one month and distribute it around the 25th of January to the taxing districts. **Mr. Dornfest** said he spoke with the county clerks and other county officials, and he said everyone is very supportive of this change.

**Chairman Siddoway** thanked Mr. Dornfest for a very thorough presentation.

**MOTION:**

**Senator McKenzie** moved to send **H 25** to the floor with a **do pass** recommendation. **Vice Chairman Rice** seconded the motion. The motion carried by **voice vote**.

**RS 21839**

**Chairman Siddoway** invited Senator Werk to share **RS 21839**, relating to solid waste disposal. **Senator Werk** said this proposal is a work in progress as he is working with counties who currently don't like the proposal to find the "sweet spot" that captures what is wanted. He said the idea is to increase local government transparency so the public is better informed. It deals only with what should be substantial changes of the operation of a landfill or county development of an energy project outside of a landfill.

**Senator Werk** described a Trash to Energy project developed in Ada County. He said current statute for landfills, as used for the public good, was very permissive in terms of what can be done to modify operations. He said Ada County wanted to create the Waste to Energy project and they didn't have public hearings associated with the project, so the public did not get to hear directly what the project was about. **Senator Werk** said the public was upset and there was much misinformation because there was no opportunity for the public to ask questions.

**Senator Werk** said the idea of this proposal is simply to require a hearing process if a county is looking within the confines of its own landfill to add a procedure that would either increase the discharge of regulated pollutants or the 'added' release of any regulated pollutants and it would require that the permit be modified for the operations associated with those pollutants.

**Senator Werk** said the public hearing would only be informational and wouldn't allow the public to stop the project, but it makes sure local government has a hearing so the public can be informed. He said another part of the proposal is the development of energy systems. If an incinerator was going to be added, currently a hearing is not required, but it would be under this legislation.

**Senator Werk** said the idea is simply to make sure there is a hearing process associated with modifications so the public is notified and informed. He said the worst case scenario for a county is the county gets held up for a period of time to get the notification and hearing done. **Senator Werk** said it is work in progress as he works with the counties to narrow the scope and catch everything in the net without interfering with changes in operations at landfills that are necessary and not major. He asked the Committee to print this RS since the Senate is up against the printing deadline and he will continue to work with the parties involved.

**Senator Johnson** asked if it was Senator Werk's intention to apply this to private landfills in the state. **Senator Werk** said right now it applies to counties and cities, even though currently there are not any cities that operate a landfill. He said no, it would not apply to a private landfill.

**MOTION:**

**Vice Chairman Rice** moved to send **RS 21839** to print. **Senator Hill** seconded the motion. Motion carried by **voice vote**.

**RS 21898**

**Chairman Siddoway** invited to the podium Woody Richards to present **RS 21898**. **Mr. Richards** said the subject of this proposal is what has been called incident response fees, crash taxes, or misfortune fees. He said he is here on behalf of Farm Bureau, Mutual Insurance Company, American Family Insurance Company, and Allstate. He said he has also been authorized by lobbyists for the Property Tax Insurer Organization, AIA Trade Association, Farmers Insurance, and State Farm, as also in support of this legislation. **Mr. Richards** explained the problem arose when insured started receiving claims from fire districts for cleaning up after auto accidents. He said that for years, accident cleanup and fire truck responses were presumed to be paid for by property taxes. He said there are exceptions in the law, in which Idaho Code allows fire districts to bill when someone drives out of normal boundaries, as in trespassing or if they started a forest fire or some such incident. Hazardous materials are also an exception under federal law.

**Mr. Richards** said this legislation is almost identical to H 647 that was introduced last session. He said before introducing the legislation last session, he met with numerous interested parties including counties, cities, hospitals, towing companies, fire chiefs and the firemen's association. He said they were able to negotiate solutions with everyone except for the fire chiefs, although, he said, they did put language in the RS to allow the cost to repair damage to property and the cost of materials used at the scene of the accident.

He described the types of bills that have been sent to insureds, including bills for supervision costs, accident costs, scene stabilization charges, cleanup and cost for meals. He noted about ten to twelve of the state's 156 fire districts have authorized 'crash taxes.' Some of these fees are covered by insurance, but for a lot of people, they are not, and in fact, some insurance companies specifically exclude crash taxes. Drivers have to have opted for collision or comprehensive insurance, but Idaho law only requires liability insurance coverage.

He said all of the districts combined billed out about \$50,000 as of the time he last spoke to the fire districts and their billing company, which is EF Recovery, based in Washington state. He said as time goes on, he expects more districts to pass enabling laws, unless curtailed by legislation, which is why he's bringing this proposal today.

**Mr. Richards** said in fairness, the fire districts say they have more expensive fire equipment that needs to be purchased and **Mr. Richards** said, "Candidly, they would also like to have the option of an additional source of revenue." He said as an aside, the \$50,000 is not a net number because the EF Recovery company that promotes these types of taxes will bill and charge for the first \$50 or 14 percent of whatever is collected to the fire district.

**Mr. Richards** said the public has a strong negative feeling about this issue. One national Harris poll last year on the subject found that 68 percent of the people surveyed oppose such fees and felt they are already covered by the taxes they pay. He said 13 states passed laws similar to the RS before the Committee, and other states have similar proposals in the works.

**Mr. Richards** said last year the bill passed the House 54-7-9, but it did not get a hearing on the Senate side. He said he met with the cities and fire chiefs this year and no agreement could be reached and that is why this proposal is brought before the Committee.

**MOTION:**

**Senator Hill** moved to send **RS 21898** to print. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**Chairman Siddoway** asked for volunteers to carry the bills to the floor. Senator Werk will carry **H 52**. Senator McKenzie will carry **H 20**. Chairman Siddoway will carry **H 24**. Vice Chairman Rice will carry **H 25**.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:21 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, February 12, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES:	Review of Minutes from January 31, 2013	<b>Vice Chairman Rice</b>
GUBERNATORIAL APPOINTMENT	Vote on the appointment of Ken Roberts to the Idaho State Tax Commission	
<a href="#"><u>H 87</u></a>	Relating to Excise Tax paid by Wineries	<b>Roger Batt</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

Room: WW50

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, February 12, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:** Vice Chairman Rice

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:03 p.m.

**MINUTES:** **Senator Lacey** moved to approve the minutes from the Committee meeting of January 31, 2013. **Senator Vick** seconded the motion. Motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** The Committee considered the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission.

**MOTION:** **Senator Lacey** moved to send the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission to the floor with the recommendation that it be confirmed by the Senate. **Senator Bayer** seconded the motion. Motion carried by **voice vote**. Senator Johnson will sponsor the confirmation.

**H 87** **Chairman Siddoway** invited to the podium Roger Batt, representing the Idaho Grape Growers and Wine Producers, to present **H 87**, relating to Wine Excise Tax. **Mr. Batt** said Idaho's Wine Excise Tax is set at \$.45 per gallon, payable to the Idaho State Tax Commission (Tax Commission). Under current statute, the tax is to be paid when wine is 'transferred' from a winery to one of its retail outlets. That means if a winery transfers several cases of wine from the winery to the tasting room to display and sell, the winery must pay excise tax upon that transfer, and not upon the actual 'sale' of that wine. That leads to potentially paying tax on a product that may never be sold or may spoil if not sold over time.

**Mr. Batt** said **H 87** amends Idaho Code § 23-1319 to clarify that the wine excise tax paid by Idaho wineries is to be paid based on the actual 'sale' of wine and not the 'transfer' of wine. He said the Tax Commission already recognizes excise tax payments by Idaho wineries based on the 'sale,' but if the Tax Commission changed its mind, it could follow the current statute and base the wine excise tax on the 'transfer.' This bill clarifies the current practice.

**Mr. Batt** pointed out a technical correction in the bill. The word "licensed" is stricken in line 21 of the bill. By definition, wineries have to be licensed in the state of Idaho to conduct business. They get the licenses through the Idaho State Police Department by filing paperwork, paying a \$300 licensing fee and having the proper background checks done. Therefore, the word "licensed" in the legislation was simply redundant.



**Mr. Batt** said the Grape and Wine Industry met with the Tax Commission in December to discuss this legislation. He said the Tax Commission agrees with the changes since it already recognizes wine excise tax payments based on 'sale' through monthly reporting forms. **Mr. Batt** said there is no opposition to this legislation that he is aware of and there is no fiscal effect as it does not change the way wine excise taxes are collected. He asked for the Committee's do pass recommendation.

**MOTION:** **Senator Bayer** moved to send **H 87** to the floor with a do pass recommendation. **Senator Lacey** seconded the motion. The motion carried by **voice vote**. Senator Bayer will carry the bill on the floor.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:08 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, February 14, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
PRESENTATION	Page for Senate Local Government and Taxation Committee	<b>Brooks Nielson</b>
MINUTES	Review of Minutes from February 12, 2013	<b>Senator McKenzie</b>
<a href="#"><u>S 1070</u></a>	Relating to Charges for Motor Vehicle Traffic Incident Responses	<b>Woody Richards</b>
<a href="#"><u>H 72</u></a>	Relating to Income Tax Credits for Charitable Contributions	<b>Rep. Thomas Dayley</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, February 14, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:** Vice Chairman Rice

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:02 p.m.

**Chairman Siddoway** asked the Committee for consent to reorder the agenda so that Representative Thomas Dayley could present first as he has a committee meeting to attend. With no objections, Representative Dayley approached the podium.

**H 72** **Representative Dayley** introduced **H 72** relating to Income Tax Credits for Charitable Contributions. He said it's being called the Education Foundation Regulatory Relief Act. He gave the Committee two handouts that provide additional information and answers to frequently asked questions. (See Attachments 1 and 2.)

**Representative Dayley** said Idaho Code § 63-3029A offers Idaho income tax credit for voluntary donations to various components of our state's educational infrastructure; public schools, libraries, museums, qualified higher education institutions, and elementary or secondary institutions that are tax exempt under Section 501(c)(3) of the Internal Revenue Code. He said in order to take advantage of these credits, many eligible entities are required to form separately governed nonprofit IRS tax exempt foundations. He said for these organizations, the annual cost of keeping their nonprofit status in compliance with all state and federal regulations can eat up a significant portion of their annual revenue. Also, the organizations often rely on volunteers as they typically have no paid staff, permanent accountants or bookkeepers. **Representative Dayley** said historically, many small organizations have lost their tax exempt status through failure to file IRS Form 990 annually.

**Representative Dayley** said the proposed change to current law would establish a mechanism through the Idaho Community Foundation (ICF; Foundation) whereby small organizations would have the option to deposit their funds into a dedicated ICF account. This account would be established to exclusively support the charitable purpose that would otherwise qualify the donor for the tax credit. He said, again, this would provide that the ICF is available to assist small foundations, but it would not mandate that foundations participate with ICF. It is voluntary.

**Representative Dayley** said it may be helpful for him to review some of the management functions for which foundations are responsible and how ICF can help the small organizations. For example, the initial foundation setup costs including the application for the IRS 501(c)(3) status is between \$500 and \$1,000, plus the substantial consumption of time to develop. He said the ICF can help with this without the cost.

He said another example is that foundations must manage the portfolio of gifts. ICF provides individual portfolio management, but the dedicated fund assets are managed as part of the much larger ICF portfolio. Over the past decade, the ICF has an authorized "distribution rate" (the amount returned to the designated charity from endowments) that has averaged between 4.5 and 5 percent over the last two decades.

Other items required for foundation operations that ICF can assist with include: organizing annual board meetings, keeping minutes and other documents, manage and distribute grants, elect board members, provide and monitor conflict of interest forms for the board, provide directors and officers insurance, conduct fund-raising, and keeping members informed in newsletters and other communication.

**Representative Dayley** said under IRS regulations, an alternative to maintaining an individual nonprofit foundation is to have the charitable cause form its own account within an umbrella foundation known as a "Community Foundation." Idaho has only one statewide community foundation, the ICF. It was founded 25 years ago by Idaho's leading charities and philanthropists to provide the benefits of a community foundation in Idaho. No other similar organization exists statewide. The ICF is accredited by the Community Foundations National Standards Board and thus is certified to be in compliance with national standards for statewide community foundations.

**Representative Dayley** explained the cost of depositing funds with ICF. He said ICF offers a range of different types of accounts, with a fee between 0.5 percent and 2 percent. He said in general, accounts that require more service work on the part of ICF are assessed higher handling fees, but these fees do not reduce the board authorized "distribution rate."

**Representative Dayley** introduced Lauren Tassos with ICF, who is available to answer Committee members' questions as needed.

**Representative Dayley** said he thought it was important to note some of the things the bill does 'not' do. He said it does not change current law regarding contributions to the ICF. He said the tax credit will only apply to dedicated accounts within the Idaho Community Foundation, and this is not a new tax credit. He said this tax credit will continue to be only on the contributions to those 501(c)(3) entities.

**Representative Dayley** said this bill does 'not' change current law regarding how a school can qualify for the tax credit. Also, this bill will not require nonprofits to create a fund in the ICF. It simply provides an 'option' to create an ICF dedicated fund under the law.

**Representative Dayley** said he has visited with representatives of several of the more than one hundred school districts in the state, including three in his legislative district, and he said he has not received any negative comments regarding the bill. He said in fact, one school district indicated it would have saved them time and money had this been law before they formed their foundation. He said those same foundations look forward to visiting with the ICF regarding creating a dedicated fund should the language in **H 72** become law. **Representative Dayley** said many organizations have indicated support for the bill, including Idaho Association of Commerce and Industry, Food Producers, and the Idaho Association of School Boards. **Representative Dayley** said he believes this would benefit Idaho schools and asked the Committee to send **H 72** to the floor with a do pass recommendation.

**Senator Lacey** said he appreciates what ICF has done over the years and asked if ICF is going to act as an umbrella, why would other entities have to have a 501(c)(3) and go through all the other efforts. **Representative Dayley** said his understanding is under the law as it is right now, the 501(c)(3) organizations have the tax credit. ICF does 'not' have that tax credit. So all that is being done is putting them in that category.

**Senator Lacey** said he knows one can donate to the ICF and get tax credit, so why should organizations go through all this other work. **Representative Dayley** deferred to Lauren Tassos, Development Officer for ICF, for further clarification. **Ms. Tassos** said currently donations to the ICF do not qualify for a tax 'credit' but they do qualify for a tax 'deduction.' Organizations or groups do not have to set up a nonprofit status before coming to the ICF. Someone who wants to set up a charity can come set up an account with ICF instead of setting up a 501(c)(3). ICF is an alternative for them. If they do have nonprofit status, they can also set up a fund.

**Senator Johnson** asked for clarification that if someone donates to the Foundation, it is not a 'tax credit' but it is 'tax deductible.' **Ms. Tassos** answered yes, that is correct. Idaho Community Foundation is a 501(c)(3) organization and donations to our organization or any account under our management qualify for a tax deduction. **Senator Johnson** said if he donates directly to a private school, under current Idaho law, he can deduct 50 percent of that as a tax credit. **Ms. Tassos** said that is correct, it is an education credit. **Senator Johnson** asked to clarify if it is indeed 50 percent. **Ms. Tassos** said she is not sure of the exact amount of the credit, but Representative Dayley may be able to answer that.

**Senator Werk** said he is not entirely familiar with how this works, but one thing that stands out for him is that perhaps the Foundation is taking on a liability in hanging on to the accounts. He said what if a foundation is not a 501(c)(3) and didn't want go through the efforts to keep that status, but sets up an account with ICF, and then the things they decided to do with the account are questionable, like how much they want to pay the head of the foundation. Because that organization is not a 501(c)(3) with all of the controls that go along with that classification, the ICF is taking in that organization and receiving money and providing a tax credit for it, so the ICF has the liability for that organization in the ICF's portfolio. **Senator Werk** said he wonders whether or not that has been considered.

**Ms. Tassos** replied that currently, when a fund is set up at ICF for a group of people who do not have their own nonprofit status, they would act as 'advisors' to the fund. She said, for example, if it was a library that set up a fund, and they wanted to make a distribution, they would be 'advisors' to the fund. If they wanted to make a recommendation from the fund, they would make a recommendation to ICF. **Ms. Tassos** said the ICF Board has fiduciary responsibility to make sure those funds are used appropriately according to IRS regulations. She said during the due diligence process, which ICF does whenever a recommendation from an advisor comes through, they look into those issues, making sure those funds are being used in an appropriate manner according to national standards. If that was not the case, she said, they would go back to the advisors and say they cannot make these distributions. **Ms. Tassos** said they have procedures in place to handle these kinds of circumstances, because they think about it and plan carefully.

**Senator Werk** apologized for not knowing more about ICF, and asked if the groups that set up accounts with ICF have to be a 501(c)(3) or if it can be anyone who wants to come in and support the library or whatever other charity. **Ms. Tassos** said the community foundation is established to make it easier for anyone who wants to give back to their area. Anyone, whether an individual, business, group of citizens or established nonprofit organization, can set up a fund at ICF.

**Senator Werk** asked for clarification that when advisors come and ask for an expenditure, ICF would check it out first to make sure it was a reasonable use of funds. He asked, when a group initially set itself up for whatever purpose without having a nonprofit status, how are guidelines derived; "how do you create boundaries where none might exist?"

**Ms. Tassos** said she should clarify that if a group that is 'not' a nonprofit organization were to set up a fund, and recommend distributions, none of those distributions would actually go back to that group, so they would never financially manage or be responsible for those funds. In the library example, the Friends of the Library would be advisors and recommend, as a group, a distribution to the actual library, to the charitable entity; in that case, the advisors don't have to follow any sort of guidelines. **Ms. Tassos** said the ICF does due diligence to make sure what they're requesting is in support of the library because that is what the fund is actually set up for.

**Senator Hill** said he thinks "we're making more out of this bill than what this bill really does, so I'd like to back up a minute." He said the discussion has been about what the Foundation can do, but that has nothing to do with what this bill does. What this legislation does say is that entities that already qualify for the credit, like education institutions in Idaho, public television, and endowment of the arts, already have guidelines on them. He said all we're talking about here is many of the school districts have an educational foundation to which people can make contributions, and they use that money for that school. ICF makes the facilitation of funds easier than when it goes directly to the school. So, these foundations are set up for the benefit of that particular school. All this does is say this rural school district doesn't have to go through the hassle of setting up its own foundation, so if they want to, they can use the ICF to set up an account and people still get the same credit donating to ICF as if they donated to the school itself. There is no change in the role of the Foundation. It is just allowing school districts and other entities to use this as a vehicle. It is just an account. **Senator Werk** thanked Senator Hill for the clarification.

**Representative Dayley** said he wanted to correct himself in that he should say school 'administrators' and not school 'board.' He also wanted to answer Senator Johnson's question, pointing to line six on page three of the bill, that shows the amount of credit allowed is not to exceed 20 percent, and that is not changing in this legislation.

**Chairman Siddoway** invited Phillip Homer of the Idaho Association of School Administrators to the podium. **Mr. Homer** spoke in support of **H 72**. He said he spent many days here as this was his committee some time ago. He said if a bill does no harm, then it is probably a good bill, and **H 72** does no harm, and is therefore a good bill. He said if a bill is permissive and allows a choice, then it's probably a good bill, and this bill is permissive and allows a choice for school districts if they wish to invest their funds at the community organization. He said he thinks the larger school districts will probably maintain their autonomy, but there are smaller school districts, especially in rural communities, that could really benefit from **H 72**.

**Senator Vick** asked about the fiscal note and if there is anticipation of more contributions because this makes it easier for schools to contribute, which would cause more donations, resulting in a fiscal impact. **Representative Dayley** said he has no way to estimate participation, and that is why the fiscal note is written the way it's written. **Chairman Siddoway** pointed out the fiscal note does say "no anticipated" impact, which is indicative that it is not known.

**MOTION:**

**Senator Lacey** moved to send **H 72** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. In discussion, **Senator Hill** said Senator Vick brings up a good point. **Senator Hill** said he had been stewing about whether or not there should be a fiscal note. He said it is probably minimal, because people who are involved are already making donations and getting credit, and this bill just make the process easier.

He said there may be a small increase in donations, but it is just setting up an account in a different way, so he is okay with it not having a fiscal note. **Senator Vick** said he likes the bill, but just wonders if there would be more schools who have not used the process before because of the hassle and may now start doing it. **Senator Hill** said that is valid. Motion carried by **voice vote**.

**S 1070**

**Chairman Siddoway** invited Woody Richards of to introduce **S 1070**, relating to charges for motor vehicle traffic incident responses. **Mr. Richards** said he represents Allstate Insurance, American Family Insurance, Farm Bureau and Mutual Insurance Company. He said the bill is about what has been called "crash taxes, incident response fees or misfortune fees." He explained that the insured began receiving claims from fire districts for clean up after auto accidents, something that people have traditionally believed was paid for by property taxes. He said state law allows for an exception, in that someone who drives out of boundaries may be billed for that cleanup, and federal law allows an exception for billing of certain hazardous materials cleanup. These exceptions would not be changed by this bill.

**Mr. Richards** said fire districts have sent bills for supervision costs, accident assessment costs, scene stabilization and even cost of meals for responders. Some people are covered by insurance if they have opted for collision and comprehensive coverage, but insurance doesn't necessarily cover these types of bills and in some cases such items are exempted. Idaho law only requires liability coverage, so many people get bills they can't pay.

**Mr. Richards** said H 647 on this same issue passed the House last year 54-7-9, but it did not get a hearing in the Senate. He said prior to introducing the legislation last year, he met with counties, cities, tow companies, hospitals, fire chiefs and the firemen's association. He said he did try to provide language he thought was fair to fire chiefs to allow separate charges for the cost of materials, repair of public property, and something well outside their boundaries. He said he met with fire chiefs again this year, but there was no further progress.

He said ten to twelve fire districts out of the 156 in the state authorize "crash taxes" and he expects to see more districts authorizing such charges in the future, unless the legislature prohibits them. Many are using a company out of Washington state called EF Recovery to collect the charges, so the roughly \$50,000 that those districts have collected is not a net amount. EF Recovery charges the first \$50 or 14 percent, whichever is greater.

**Mr. Richards** said the public is aware of this issue and does not like the imposition of "crash taxes" and 68 percent of people in a Harris Interactive poll in May 2011 oppose the fees and said fire districts are already paid for this service through property taxes. He said thirteen other states have passed legislation like **S 1070** and other bills are being introduced in other states.

**Senator Johnson** said he spoke with the fire chief in Lewiston and he expressed the concerns Mr. Richards just identified. He asked if insurance companies collect a fee if insured people elect to have this coverage in their policy. **Mr. Richards** answered he can't speak for all insurance companies, but he can speak generally. He explained that when underwriting an insurance policy to determine a premium, agencies try to anticipate what costs there are. In the past the charges were not made and in fact many policies prohibit them, so obviously there would not be an insurance premium charged for that. He said as time goes on, though, if there were to be more and more of these charges, insurance companies would start to calculate that as part of their underwriting cost and insureds would be paying more for their insurance premiums.

**Senator Johnson** asked if policy holders currently pay a premium for this service or have any insurance companies that Mr. Richards is aware of ever paid a claim for this service. **Mr. Richards** said there have been a lot of insurance companies that have said they would 'not' pay that cost, as it is not an appropriate charge. He said he is anticipating that some have been paid, perhaps under protest, but still paid. **Senator Johnson** asked again if policy holders pay a premium for this service. **Mr. Richards** said he may be misunderstanding the question but as he said, the premium tries to anticipate the cost, and if the policy says it prohibits it, then they are not paying anything for that.

**Senator Johnson** cited his own insurance policy as an example, saying it lists collision, comprehensive, and other items. He asked Mr. Richards if there is a line item that would say "emergency recovery fees" or "will also cover these types of incidences." **Mr. Richards** said there may be some policies that specifically say it does not cover this.

**Senator Johnson** said he had some figures to share from the fire chief in the City of Lewiston. In 2010, they had 9 responses for recovery of \$5,891.81. In 2011, they had 20 responses for a recovery of \$5,148.58, and in 2012, they had 13 responses for \$1,531.29 (some cases still open), all using EF Recovery system. He said the fire chief's point was that it is good for the cities because there are some things that are not covered in the tax base, such as absorbents or disposal types of things. **Senator Johnson** said the fire chief said as long as this is not abused, it should be a good thing for the districts to have.

**Senator Hill** asked if every other emergency service provider is on board, except for the fire chiefs. **Mr. Richards** answered that as far as he knows, the only group objecting is the fire chiefs. He said he met with counties and hospitals and 'actual' firefighters.

**Senator Hill** asked if Mr. Richards knows what other states are doing to address this issue or is Idaho the only state facing it right now. **Mr. Richards** answered that "we all have respect for these guys who are doing dangerous jobs in commendable ways." He said there have been discussions in other states, and this is becoming a topic of national interest. He said thirteen states have passed bills that limit the collection of these fees, and other states have legislation pending. **Mr. Richards** said he is not sure what is being charged in other states, but Idaho is not the only state facing this issue.

**Senator Hill** asked Mr. Richards as this bill was being put together if they looked at what other states have done as a model, as far as verbiage for what other states are doing. **Mr. Richards** said he does not think there is a "model act" or anything like that, but they looked at some other states proposals, like Utah's, and through negotiation process, they came up with something that would make sense.



**Senator Johnson** asked for clarification about when an accident happens, and a stop sign is knocked down, if the insurance company can be billed for that. **Mr. Richards** said yes, any public damage would still be collectible as cleanup and covered by insurance.

**Senator McKenzie** asked if absorbants count as a material that can be on a billing. **Mr. Richards** answered yes.

**TESTIMONY:**

**Chairman Siddoway** invited Corey Child of the Madison Fire Department to the podium to testify. **Mr. Child** said he was respectfully standing in opposition to **S 1070**. He said he represents multiple agencies today, including Association of Idaho Cities, Madison County, City of Rexburg, and Eastern Idaho Fire Chiefs Association. He said he believes the decision of recovery should be left to the sound judgment of local officials rather than handed down by the state.

He said they provide a tremendous service for a very low cost. The department has to raise money through bake sales. **Mr. Child** provided a spreadsheet that lists every fire district and their property tax levies. (See Attachment 3.) He said it's important to note that most provide similar services in emergency response and extraction during an accident. He said he applauds those districts for doing so much with so little. He said it is very expensive, when considering the training, the tools and the trucks, which are high ticket items.

**Mr. Child** said funding services partially through tax and fee revenue is nothing new and does not constitute "double taxation." He noted the Bureau of Homeland Security bills for hazardous material spills on state highways. Another issue is that some departments have to respond to calls outside of their jurisdiction, which means some people, like tourists or commuters, who have an accident aren't paying the property taxes in the county in which the accident occurs. He said most of the accidents in Madison County are out of town drivers. That leaves the taxpayers paying the bill for people who don't live in their community. **Mr. Child** said Madison County and Rexburg have ordinances in place to allow for cost recovery; however, they do not currently engage in cost recovery.

**Mr. Child** said the insurance companies have concern about the lack of standardized practices. He said he agrees, and that is why his associates would support adopting a uniform fee schedule already in place and managed by the Idaho Department of Lands. He said the insurance industry has the ability to decide if fees will be covered under a policy, and the insured would decide if they want or don't want that coverage, rather than the lawmakers deciding for them. He thanked the Committee and asked for **S 1070** to be held in committee.

**Senator Hill** asked if the concept of a uniform fee schedule was discussed during negotiations with fire chiefs, or some other idea to bring consensus. **Mr. Child** said a uniform fee schedule was discussed at length, and the insurance industry was opposed to it. **Senator Hill** asked if fire departments are consistent with the billing for services, meaning are charges the same whether the victim has insurance or does not, or if they are residents or not. **Mr. Child** said it is very varied, which is why they liked the idea of a fee schedule to bring equality and standardization.

**Chairman Siddoway** noted the bill says cost shall be the actual expenses incurred, then any other charges would be portioned out for those costs. He said it seems to him that pretty well covers the costs that would be incurred for an incident, but what he's hearing from Mr. Child is that no, it doesn't cover it. **Mr. Child** said last week there was a semi truck accident at 3:00 a.m. and cleanup took until 4:00 p.m. They used two or three bags of kitty litter at a cost of \$15. He said this proposed legislation would let them bill \$15 for 12 hours worth of service and mitigation. He said all the labor, truck hours, extraction equipment used, not to mention wear and tear on the equipment, are not covered by this proposal.

**Chairman Siddoway** asked about 'volunteer responders' and how they fit into the department. He asked if overtime expenses would be considered actual expenses incurred, and if people in the department are being paid for that day's labor, whether they were in the station house or out responding to an accident. He said the way he reads it, those additional expenses would be covered, unless he's not reading it the same as Mr. Child.

**Mr. Child** said he does not read it that way, but rather that materials are the only expense allowed. He said when there is an accident, crews are tied up for twelve hours, so he has to "backfill the station" and pay both crews. He even has to pay workers compensation costs on a minimum wage rate for volunteers, so he has hourly compensation to pay for insurance, even if he is not paying the firefighters by the hour.

**Chairman Siddoway** invited Karl Malott, Fire Chief for the Nampa Fire Department, to the podium. **Mr. Malott** said he is before the Committee to oppose **S 1070**. He said this legislation is not needed in Idaho and is just a kneejerk reaction to situations elsewhere in the nation. He said fire departments have to take care of people who are not residents of the area in which the agency is responding. He referenced a questionnaire and asked for it to be distributed. (See Attachment 4.) He said he did a survey of how different fire districts handle fees, and he found that what is charged varies across the state. **Mr. Malott** said the Kooskie fire chief said they would not be able to provide service if they weren't able to charge fees. He said the departments that will be affected are the small ones with a state highway going through them that have crash victims who are not a resident taxpayer of that area. He said property owner taxpayers pay for the fire department to cover nonresident crashes.

**Mr. Malott** said some fire departments are displaying ingenuity with their lack of funding, like disassembling a truck to make it a flatbed to be used for accidents. He said he took his EMT (Emergency Medical Technician) class 24 years ago, and a big component of that class was vehicle extraction. He said he couldn't say whether they charged a fee or not. He said back then, they used to go out and hose down antifreeze and gas spills and just hose it off the street, but with today's EPA (Environmental Protection Agency) rules, they can't do that, so it's much more expensive. He said extraction has changed a lot, especially with hybrid cars and newer heavily reinforced door posts, so it's much more difficult.

**Mr. Malott** said he would stand with the insurance companies if they had evidence this was being abused, but it is a pretty small issue and he would like to leave it to local control.

**Senator McKenzie** said he sees both sides. He said it seems reasonable to define somewhere what is charged for what and to have a maximum for it. Typically when there is discussion about local control over fees, it is usually the county employees who set them, and if the community doesn't like it, they can un-elect those people. He said it's the same with state officials. **Senator McKenzie** said his concern is for protecting citizens if fees were to become unreasonable.

**Mr. Malott** said under statute as a government entity, they are not allowed to charge more than actual cost for the accident responses. He said they try to be reasonable with insurance companies. He said every year they establish rates for different responding apparatus, from water tenders to fire engines to ambulance crews, whether with a crew or without. He said there is a fee schedule they would be willing to adopt, but in most cases they don't mind using the third party group in Washington to collect the fees. He said the \$50 administrative fee the company charges seems reasonable, compared with having to pay a secretary to process all the accident information and collect the charges.

**Chairman Siddoway** invited Russ Hendricks, representing the Farm Bureau Federation, to the podium. **Mr. Hendricks** said he is here to support **S 1070**. He said they believe, as do taxpayers across the state, that accident response fees are double taxation. He said people pay property taxes and through those receive general services, including responses to car accidents and other incidents. He said their big concern is if there is movement toward a fee schedule, they would like to see a reduction in property tax levies at corresponding levels. **Mr. Hendricks** said crash taxes are not a transparent way to raise fees. He said there are people from out of state who have no idea what these fees are, and it's like a form of roulette, where they will say, "Don't have an accident in this county, wait until the next county, because we don't know what the fee would be." He said if a fee schedule is set up for fire departments, then police departments will be next in line to get a fee when they respond to an incident. **Mr. Hendricks** said whether or not they need overtime, the costs should be handled under current property taxes. He said this bill does allow fire districts to recoup variable expenses, and this bill is an appropriate way to address this issue.

**Chairman Siddoway** called for Phil Barber of American Insurance Association to speak, and from the audience, **Mr. Barber** stood to say in the interest of time, he would stand in agreement with everyone in support of the bill and leave it at that.

**Chairman Siddoway** invited Justin Ruen of the Association of Idaho Cities (AIC) to the podium. **Mr. Ruen** said he opposes **S 1070**. He said "the ground has been pretty well plowed" on the big issues surrounding this bill. He said the AIC's position is they believe local elected officials are in the best position to make determinations based on the needs of their communities in relation to these fees. He said many communities see a large amount of traffic of people who don't reside in that community relative to their population size and that creates a burden for their property tax payers. He said cost recovery mechanisms provide a way for them to keep providing these essential services without overburdening the taxpayers in Idaho.

Next to the podium was Lyn Darrington, representing State Farm Insurance Companies. **Ms. Darrington** said the companies she represents are in support of **S 1070**. She provided a handout to demonstrate the types of bills that are being sent to accident victims. (See Attachment 5.) She said no one starts out the day saying, "I think I'll go cause or get in an auto accident today," because the last thing people need is another misfortune fee. She showed some examples of billing in Idaho in 2012. She cited one example from a vendor in California that billed for items like scene assessment and stabilization, and 'additional' time on the scene. **Ms. Darrington** showed an invoice from an accident in Bonner County, that was part of an invoice that included labor and materials, but this one was for 'lunch' for 20 responders.

On an invoice from EF Recovery in Washington, she pointed out they mention in the fine print the Idaho statute for "Hazardous Substance Emergency Response Act." They list labor, equipment and materials on the bill. She said she went to their website and the material was listed as \$17.95 online, but the bill was for \$30.80. In a phone call with another vendor, she said she asked about the \$360 charge for labor, and she said she was told there is no other time increment allowed for billing than a Flat Labor Rate of one hour at \$360 per hour. So, if they were only there for 15 minutes, they still charge for one hour. **Ms. Darrington** said another point she'd like to make is when Idaho districts use EF Recovery Service, the money is going out-of-state to Washington. She said many people only carry liability insurance, so when an accident happens they get these bills. She noted the Harris poll that said 68 percent of people said this is what they pay taxes for. **Ms. Darrington** urged the Committee for a do pass vote.

**Chairman Siddoway** introduced Mike Kane of Property Casualty Insurance Association of America (PCI), which is a trade association made up of casualty insurers, including Progressive, Geico, Liberty, Farm Bureau, American Family and others. **Mr. Kane** said he had a couple of "big disconnects." Even though the insurance companies are here, this is not a battle between insurance companies and the state of Idaho or the firefighters and the state of Idaho. He said what he thinks is going on is insurance companies are getting billed, and have to tell their insured they can't pay those bills according to their policy, and it's not appropriate for insurance to pay those items. Then the insured get angry with the insurance companies. In a very real sense, the insurance companies are standing up for the 'victims' of these situations. He said he says that intentionally, because there is nothing now that prevents people who are completely innocent from being billed. For example, he said, "You leave the house and you get t-boned by a guy who runs a stop sign. There is nothing that prevents you being billed because your car drops some antifreeze."

**Mr. Kane** said what he sees here is a fault-based crash tax bill, designed primarily to take care of the people who do wrong, and not the people who are innocent of any wrongdoing. He said that's why districts can charge, under certain circumstances, the person who is legally responsible for the accident. They can be billed for damage to public property and materials used for clean up, which is reasonable.

**Mr. Kane** said there is a 'manual' that serves as an agreement between the Department of Lands and individual fire districts. It allows that when people leave the fire district into the Department of Lands jurisdiction, the Department of Lands will pay. **Mr. Kane** said he is okay with that and doesn't want to interfere with that process. He said the numbers in the manual are off the charts as far what an individual has to pay, including hundreds of dollars an hour. He said those fees should not be imposed on an innocent party. He said this "crash tax" bill is based on a Utah law. He said for these reasons, PCI supports this bill.

**Chairman Siddoway** invited Paul Jackson, Farmers Insurance Group, Inc. to the podium. **Mr. Jackson** said he wanted to clarify one point for Senator Johnson's question about a line item in a premium. He said to his knowledge there is not a specific line item for incident response fees or something similar. He said insurance premiums are predicated on the costs and on statistical anticipation of costs. He said if insurance providers costs go up, insurance premiums go up.

**Mr. Richards** was invited back to the podium for his last points in the discussion. He said he is sympathetic to the increased cost of fire equipment over the years, but these fees cannot be the answer to that, philosophically or economically. This is not going to be able to solve a fraction of that problem. He said there are other avenues, like raising taxes, or get something else in the law, but these fees would be a great irritant to a lot of consumers and not raise a lot of money or accomplish what the fire districts hope.

**Mr. Richards** said they tried to cover the variable costs in this bill. He said fire districts are already setting budgets trying to anticipate equipment costs and labor costs over time, things that have traditionally been covered by property taxes. He said that is why the public is so surprised when they get a bill for a fire truck appearing at the scene. He said he doesn't think there is a big issue for a tourist from out of state, because he looks at it as they have paid things like hotel taxes and sales taxes. He said "we want the tourists' money, and we don't want to be known as the stay away from that state, like Jordan Valley was for a while, because they are hostile to people who come through the valley." **Mr. Richards** said he appreciates the time this was given today.

**Senator Lacey** asked how much money have insurance companies paid out in the state of Idaho in the last year, a lot or minimal, and then he asked if trucks and labor are not billed, but could that be interpreted as actual costs because they have to be there for the cleanup. **Mr. Richards** replied right now there is not a lot of money paid because there are not a lot of fire districts charging these fees yet, but it could become more significant. He said it is not going to break an insurance company, but it something both insured and people who do 'not' have insurance believe is inappropriate. In response to the second question, he said the reason they did not include equipment and labor as actual costs is because when property taxes are paid, it is assumed that fire districts are budgeting for something, including salaries and equipment. **Mr. Richards** said these fees are not the philosophical or economic solution.

**MOTION:** **Senator McKenzie** moved to send **S 1070** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

**DISCUSSION:** In discussion, **Senator McKenzie** said this is toughest bill he has personally considered in this Committee so far this session. He said he understands the plight of the fire districts, especially when looking at the numbers of property taxes that are going to support this critical basic function of government to protect its citizens. He said what led him to the motion is that he thinks there should be some boundary set by policy makers who are responsible to the people as to what the charges and amounts should be. He said they may come back and address this further in the future, but this is a starting point. Billing the person who caused the accident is an appropriate standard, including materials and damages to public property, but the cost to move the vehicle should be limited.

**Senator Werk** said he has been involved in hazardous waste activities and when an accident involves the release of materials that are hazardous to the environment, he does not see this bill as having an adequate vehicle for recovering those costs. He said he sees the philosophical debate about who charges and how much is being charged, but especially for the jurisdictions that have busy highways going through them, there isn't adequate recovery. He said he will be respectfully opposing the motion.

**Senator Hill** said he agrees completely with Senator McKenzie, but he would rather see these groups gather and work something out. He said this bill has some good things in it, like restricting liability to the person who caused the accident. He said he thinks the actual costs are too limited here and should be revisited. **Senator Hill** said his advice to the fire department people is, if they get a reprieve on this, they need to go back and put together some kind of uniform fee schedule to prevent excessive fees like Ms. Darrington showed. He said it would also eliminate the problems someone else mentioned about, "which county do you want to get in an accident in?" **Chairman Siddoway** said his advice is no matter what the vote is, the parties need to get together and straighten this out.

**Chairman Siddoway** repeated that Senator McKenzie had moved to send **S 1070** to the floor with a do pass recommendation and Senator Vick had seconded the motion. Motion carried by **voice vote**.

**PRESENTATION:** **Chairman Siddoway** invited the Committee Page, Brooks Nielson, to the podium. **Chairman Siddoway** thanked Brooks for his help during the first part of the session and asked him what he has learned from this experience. **Brooks** replied that he doesn't really like politics, but he has gained a better appreciation for it. He said it seems so frustrating at times, so the Committee hasn't changed his mind that much. He said he has enjoyed it though, and it's been fun, and he thanked the Committee.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:32 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, February 21, 2013**

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Review of Minutes from February 5, 2013	<b>Senator Vick</b>
	Review of Minutes from February 12, 2013	<b>Senator McKenzie</b>
<a href="#">S 1107</a>	Relating to Revenue and Taxation and certain assessment notices electronically to the taxpayer	<b>Senator Winder</b>
<a href="#">H 86</a>	Relating to Taxes	<b>Mike Chakarun</b> , Idaho State Tax Commission
PRESENTATION	Personal Property Taxes and the Idaho Economy	<b>Dr. Peter Crabb</b> , NNU Professor of Economics

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Thursday, February 21, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS  
PRESENT:**

**ABSENT/  
EXCUSED:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CANCELLED** Due to the Senate being in floor session and Committee members engaging in active debate of S 1042 relating to the State Health Exchange, **Chairman Siddoway** cancelled the Local Government and Taxation Committee meeting for February 21, 2013. All speakers and guests were timely notified and all agenda items will be moved to Tuesday, February 26, 2013.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary



AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, February 26, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Review of Minutes from February 5, 2013	<b>Senator Vick</b>
	Review of Minutes from February 12, 2013	<b>Senator McKenzie</b>
PRESENTATION	Personal Property Taxes and the Idaho Economy	<b>Dr. Peter Crabb,</b> NNU Professor of Economics
<a href="#"><u>S 1107</u></a>	Relating to Revenue and Taxation and certain assessment notices electronically to the taxpayer	<b>Senator Winder</b>
<a href="#"><u>H 86</u></a>	Relating to taxes	<b>Mike Chakarun,</b> Idaho State Tax Commission
<a href="#"><u>H 137</u></a>	Relating to Urban Renewal Law	<b>Rep. Luke Malek</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, February 26, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:04 p.m.

**MINUTES:** **Senator Vick** moved to approve the minutes from February 5, 2013. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

**Senator McKenzie** moved to approve the minutes from February 12, 2013. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**PRESENTATION:** **Chairman Siddoway** invited to the podium Dr. Peter Crabb, Professor of Finance and Economics at Northwest Nazarene University (NNU), for a presentation on Personal Property Taxes and the Idaho Economy.

**Dr. Crabb** offered a disclaimer, saying he is here to represent only his personal views, and his statements are not necessarily representative of the views of his employer, NNU. He said he is here to speak in support of Governor Otter's proposal to eliminate Idaho's personal property tax. He said it is his thesis that the burden of Idaho's personal property tax is largely borne by the state's workers and unjustly taxes the sector of the economy that Idaho is currently trying to promote.

**Dr. Crabb** said the argument most often put forth for eliminating Idaho's personal property tax is administrative burden. He said economists rate the effectiveness of a tax by looking at how well it raises revenue without distorting incentives for households or businesses, but the administrative burden of tax, like filing tax forms, sending in payments and record keeping, etc., is just one measure of how well a tax is working.

He said the first of two broader economic principles applicable to this debate is that of tax incidence. He said economic theory shows that there should be more worry about the 'incidence' of tax and how businesses respond to tax policies, rather than how hard the taxes are to collect. He said any action that is changed due to taxes will affect the likelihood of investing for economic growth. He said such tax-induced actions affect what is known as 'tax incidence' or how the burden of the tax is shared. **Dr. Crabb** said the citizens of Idaho bear the burden of taxes, even if the citizens don't actually make the payment.

**Dr. Crabb** said Idaho's personal property tax is a business expense like any other. Businesses must offset this cost against revenues to make a profit, and therefore, such a tax is often passed on directly to consumers in the form of higher prices.

He said in this case, personal property tax is like a hidden sales tax on individual consumers. He said businesses may also adjust other costs when taxed. All businesses are collective enterprises formed by individuals and taxes must in one way or another flow through to the individual.

**Dr. Crabb** said recent economic research shows that the incidence of corporate income taxes, for example, are borne by workers and shareholders alike. He said work by the Congressional Budget Office suggests it is reasonable to assume that workers and shareholders split the cost of the tax evenly. (See Attachment 1 for source.) He said researchers at the accounting and consulting firm of Ernst & Young estimate that burden of all business taxes, including property, falls disproportionately on workers. (See Attachment 1 for source.) **Dr. Crabb** said, for Idaho, these researchers estimate that 56 percent of all taxes are "shifted back to labor."

**Dr. Crabb** said in previous testimony before this Committee, Dr. Stephen Cooke suggested that a business personal property tax is purely a tax on capital. **Dr. Crabb** quoted him as stating that taxing "capital less than labor encourages the substitution of the relatively cheaper capital for labor." **Dr. Crabb** said Dr. Cooke further suggested that Idaho is in a "low-skill wage equilibrium trap" and needs revenue from the business property to better educate its workforce.

**Dr. Crabb** said, however, the research cited above argues that labor productivity rises as more capital is employed in a state. He said higher labor productivity, and the associated higher wages, is exactly the stated objective of Idaho policy makers today. He said the recently passed **H 100**, known as the Idaho Opportunity Fund, will provide \$3 million in grants that will supposedly bring higher valued businesses to our state. The act reads, "The intent of the Idaho Opportunity Fund is to promote economic development and provide financial assistance, through the Idaho department of Commerce, to retain, expand or attract quality jobs in industries deemed vital to the health of the local and statewide economy." **Dr. Crabb** said the state should not retard higher productivity in 'quality jobs' by taxing these same industries. He said it will not serve Idaho to increase the skills of its workforce if there are no companies seeking to employ such workers.

**Dr. Crabb** said the second economic principle applicable to the question of business property taxes is the equity of the tax. He said economists have identified two principles of equity in taxation: horizontal equity and vertical equity. He said horizontal equity is the idea that taxpayers with similar abilities to pay taxes should pay the same amount, like a flat tax, meaning a tax should not favor one group over another. Conversely, he said, vertical equity is the idea that taxpayers with a greater ability to pay taxes should pay larger amounts. (See Attachment 1 for source.) **Dr. Crabb** said all firms are collections of individuals, so it is actually individuals who are paying those taxes. He said the shareholders in Idaho Power are Idaho residents.

**Dr. Crabb** said personal property tax violates the principle of horizontal equity by favoring service businesses over production or manufacturing businesses. He said a service business relies mostly on people to get its work done, while manufacturers need equipment and therefore generally pay higher personal property taxes. **Dr. Crabb** said many will argue that income taxes should be progressive, whereby the rich pay more as in vertical equity. But, he said, it is hard to make the same argument for businesses. He said if up to 50 percent of all business taxes pass through to workers as previously discussed, the business property tax also violates the principle of vertical equity.

**Dr. Crabb** said the empirical question of whether or not the personal property tax hinders economic growth is unanswered. He said to date, his review of the economic literature finds no statistical relationship between economic growth and personal property taxes.

**Dr. Crabb** said Dr. Cooke's earlier testimony included research suggesting that such a tax may be, in Dr. Cooke's words "counter productive." **Dr. Crabb** said that research Dr. Cooke cited does not have such a conclusion.

**Senator Werk** asked Dr. Crabb if he was asked to come and rebut Dr. Cooke's presentation. **Dr. Crabb** answered no, he was not asked to rebut Dr. Cooke. He said he was asked to come and speak to this Committee about business property tax and in his preparation for that, he found Dr. Cooke's presentation. He said he was aware of it before, but he went to look at his presentation. **Senator Werk** asked if Dr. Crabb listened to Dr. Cooke's presentation. **Dr. Crabb** said yes he did. **Senator Werk** asked if Dr. Crabb was in the room for the presentation. **Dr. Crabb** said he got a copy of the recording from the committee secretary. (Secretary's Note: All requests for recordings of any Committee meetings are referred to Idaho Public Television.)

**Dr. Crabb** said the researchers studied the relationship between tax expenditure limitations and economic performance within a state. First the authors use data on tax and expenditure limits for 'real property' taxes appropriations, not business taxes, so he said the data for this study is not appropriate or applicable for the analysis of business property taxes. Secondly, **Dr. Crabb** said, the authors concluded that tax expenditure limitations "are not associated with higher levels of business climate and economic performance by states." He said they studied 84 different measures of state economic performance, but only eight showed statistical significance, none of which relate to personal income or economic growth. He said they concluded there is only "limited evidence that tax and expenditure limitations are associated with a poorer business climate." He said that nowhere did the research say it was "counter productive" as Dr. Cooke presumed.

**Dr. Crabb** said his own review of data confirms little or no relationship between economic growth and a state's personal property tax. He said according to data compiled for 2009 by the Tax Foundation, there is a negative correlation between state income growth and personal property tax collections per capita. He said on average, those states with lower personal property tax revenue grew faster; however, the roughly one quarter of a percent difference in economic growth from 2000 to 2009 between the two groups is not statistically significant at standard levels. (See Attachment 1 for source.) **Dr. Crabb** said while the earlier research he cited does confirm a cost to labor from higher business taxes, such as the personal property tax, he does not know the extent to which other factors impact overall economic growth.

**Dr. Crabb** said economic theory does predict that, all else equal, a state with a tax system that is easy to administer, spreads the tax burden, and does little to distort incentives will have a faster growing economy. He said repealing Idaho's personal property tax furthers this objective. He said he believes it is also unreasonable to be promoting the development of capital-intensive businesses in Idaho while taxing them more than others. He said the burden of Idaho's personal property tax is borne by the state's workers and unjustly taxes the sector of the economy that Idaho is currently trying to promote.

**Senator Hill** asked Dr. Crabb to explain what it means when he says "a good tax system does little to distort." **Dr. Crabb** replied that one of the principles of economics is that people respond to incentives, as in "we work harder when we're paid more or we avoid risky behavior when it is costly to us." He said tax policy, like government regulation or other public policy, will somehow change those incentives.

He said when a tax policy is structured in such a way that it causes a particular entity, whether an individual or a group of individuals in a business, to change their behavior, economists say the incentives have been "distorted." He said when that happens, the basic model of supply and demand doesn't hold anymore, and the analysis has to be altered, because the assumptions behind the model are not what they were when they started.

**Dr. Crabb** said when the assumptions are altered, there are different outcomes. In general, economists measure outcomes in "deadweight loss" which is the difference between the total value to producers and consumers in a particular market from a nondistorted market to one that is distorted. When there is a large incentive to change behavior, there is a larger deadweight loss.

**Senator Hill** said that's a different term that he has not heard before in relation to economics. He said Dr. Crabb seems to be talking about 'negative' incentives in a tax standpoint, so what about positive incentives that choose a certain industry and try to create a change in behavior based on tax incentives for limited industries or limited acts, and if that produces the same kind of "deadweight loss." **Dr. Crabb** said he is not familiar with any study that shows that businesses have responded favorably to higher taxes, if that is what is meant by saying "positive tax effect."

**Senator Hill** said what he means is, for example, a new jobs credit, to reward businesses that create new jobs. He said that may be more advantageous to manufacturing or to the service sector, depending on how it's looked at. He said Dr. Crabb was speaking about how the free market system can be distorted by distorting the incentives, so what he's asking is if there are 'positive' incentives that are restricted to certain behavior that create distortion or is it better to have a more evenly distributed, broad tax base. **Dr. Crabb** said business enterprise and individuals in the general market model will respond positively to any tax incentives. They will change their behavior. He said the change in the tax code policy that creates the incentives to save more generally leads to more savings, and that can have a positive long-term effect on the economy. Another example is an investment tax credit in certain industries that can create more investment on behalf of firms, which leads to higher productivity in the company and increases the standard of living.

**Dr. Crabb** said as he mentioned today, such policies might violate one of these two principles, as to whether or not a tax is good or operating well or working sufficiently. He said often they violate the "horizontal equity" or "vertical equity" principle, and in his opinion it is most often horizontal equity. He said the best tax in this general economic theory is one where the tax credit, positive or negative, is spread over the widest segment of the economy.

**Senator McKenzie** said Dr. Crabb pointed out the principle of equity shifting and that at least half the tax on business gets passed down to workers. He asked about these factors: if the personal property tax is eliminated, and there is the potential to shift the cost to property owners, which are in large part individuals; and, if provided services are maintained by using property taxes are used to cover that; or, if that cost is shifted to the general fund (which is other businesses or individuals paying income tax or sales tax) and reduce the services that are provided to individuals. **Senator McKenzie** said it seems these factors should weigh on the scale somewhere as one of the effects of eliminating or reducing this tax.

**Dr. Crabb** said he doesn't address the issue of how to replace funds lost by eliminating the personal property tax, nor has he looked at budgets or laws that exist to do so. He repeated his earlier response that the best and most efficient tax would be to spread the burden.

He said a real property tax would do that, just as replacing it with sales tax would. He said it would spread the burden, lower the tax incidence, and support the horizontal equity model in the case of the sales tax; it would support the vertical equity model as well.

**Dr. Crabb** said, "But, I wouldn't leave it at that." He said the bigger question is whether or not the state of Idaho has to replace that revenue, but he said that is not an issue he has addressed.

**Vice Chairman Rice** asked for clarification about the studies Dr. Crabb referred to as not significant because they didn't isolate just personal property tax versus other economic factors. **Vice Chairman Rice** said when it's not comparing apples to apples, it's time to turn to economic theory where, if everything else is the same, and personal property tax is eliminated, theory says the economy will grow better. **Dr. Crabb** said yes, that is correct, if he is holding all else constant, which is what he believes these studies were unable to do. He said one piece of research that he cited did have a number of control factors and they were able to isolate some statistical effects. He said he has been unable to locate any further studies that do that, and he said Dr. Cooke's study does not isolate the effects. **Dr. Crabb** said Vice Chairman Rice is correct in that all else equal, investment in the state would increase by the elimination of the personal property tax.

**Vice Chairman Rice** asked if economic theory would indicate that in addition to increasing economic activity, it would increase the higher wage jobs that come from manufacturing. **Dr. Crabb** said it is his belief that yes, 'if' the elimination of the tax does in fact attract such industries that have higher technology needs, then yes, productivity should rise, but theory cannot predict if it will attract such industries.

**Senator Werk** said his sense is that economists tend to disagree with each other and there are many schools of thought in economics and asked if he was misguided in that understanding. **Dr. Crabb** answered that yes, economists do disagree. **Senator Werk** said he knows there are different types of economists, and each tends to view economics and theory through a prism. He asked Dr. Crabb what kind of prism does he view it through, and how would he classify his place in economics. **Dr. Crabb** replied he is by trade a financial economist with degrees in finance 'and' economics. He said his professional background is in banking and investment banking. He said as he studies issues, he looks at financial markets and in doing so, he looks at investment and the primary function is to channel savings into investment, and how that leads to higher economic growth. He said the question he addressed today of higher economic growth is part of what is labeled in the twentieth century as 'macro' economics. Prior to the 1930's it was only microeconomics. Most economists in training have micro theory as the basis of their training, as he does, so that is his prism. **Dr. Crabb** said in this analysis, he's not trying to make any moral assumptions or address normative issues, rather he is simply stating what theory predicts would happen should it be decided by policy makers to repeal this tax.

**Senator Werk** summarized from Dr. Crabb's statement that anytime business is taxed, the tax flows outward because someone has to pay it. **Dr. Crabb** said yes.

**Senator Werk** said when he hears this argument, it reminds him that Idaho is not a walled country, so what is done in Idaho has more of an effect on Idaho citizens when they subsidize a commodity that goes elsewhere in the world and is sold for a lower price. He said it seems Idaho is placed in a walled compound, which is nice for theory, but when looking at the real world, and widgets are subsidized and get purchased out of state for a lower cost, **Senator Werk** said, he wonders what Idaho gets back for that investment.

**Dr. Crabb** answered that is good reading between the lines. He said in theory, all else is held constant, and in the scenario Senator Werk suggested, it's not held constant in that Idaho trades with other states, and it is not what would be called a "closed economy." He said however, another principle of economics is that trade makes everyone better off. Trade doesn't occur unless it is a win-win situation.

**Dr. Crabb** said the fact that Idaho may make widgets here and trade them with other states or the rest of the world, is because they have something Idaho wants. Idaho gains from that trade. He said while it might be true that his analysis is restricted to a closed economy, relaxing that restriction should not change the assumption, because the benefits from trade would still be there. **Dr. Crabb** said when any particular industry is subsidized, it won't trade those products unless there is something mutually beneficial to the trade.

**Senator Werk** said when Dr. Crabb discussed "the shift" of moving the tax on business properties over to other property owners, his thoughts went to the fair system to evenly distribute the tax. He said when a tax is shifted, it is not necessarily an 'even' shift, and he asked how can the burden be shifted more equitably. **Dr. Crabb** replied under economic theory, the policies that fit the horizontal equity principle the best are sales taxes, because the tax is only incurred if "you're willing to trade." **Dr. Crabb** said there is only a trade if there is some mutually beneficial reason to trade, so the best tax policy under that principle is a consumption tax of some sort. He said he would add that consumption taxes don't have to be 'sales' taxes, but they should be broadly based. To be broadly based, they would not include any exemptions. He said if that principle is to be fulfilled, within economic theory, there would be a consumption based tax that is paid by anyone who makes a mutually beneficial trade.

**Senator Vick** asked about tax expenditure limitations and economic performance. He said he's struggling a little to see the correlation to the personal property tax and asked Dr. Crabb for clarification. **Dr. Crabb** said the point he makes is there is no correlation. He said these tax expenditure limitations were part of the research cited by Dr. Cooke during his presentation before this Committee. **Dr. Crabb** said he does not think that research is appropriate or applicable to this question of personal property tax exemptions. He said that was the terminology Dr. Cooke used in that study and those were the laws researchers used as indicators.

**Chairman Siddoway** said there are several personal property ideas floating around and one that has been a struggle is whether the centrally assessed operating properties should be in or out of the exemption. He said there are three different classes of operating properties, including the ones that have the monopolies, like the electrics. **Chairman Siddoway** asked for Dr. Crabb's opinion on whether he would leave those in the exemption or not, because they are good tax collectors since they collect from just about everybody on the basis of "the more you use, the more you pay."

**Dr. Crabb** said Chairman Siddoway correctly stated the principle of "the more you use, the more you pay," which is consistent with both horizontal and vertical equity principles. **Dr. Crabb** said he is not very knowledgeable with how the personal property tax code system is collected in Idaho, but if he sticks to his principles, a complete elimination of the tax will use both the broad economic issues that he addressed as well as the equity principle that the Chairman addressed. **Dr. Crabb** said for that reason, he supports full elimination.

**Senator Bayer** asked if Dr. Crabb had any insights in regard to expectations on the budget side of the formula. He said on a state level, when the legislature is faced every year with budget setting challenges, it is a revenue-driven system; as changes come in relation to tax policy, they deal with a budget-driven system that has parameters like limits on growth and other variables like annexation for cities.

**Senator Bayer** said that sets an entirely different stage and creates challenges when looking at 'shifting' the burdens to make budgets whole. He asked Dr. Crabb for his insight on any expectations on revenue-driven versus budget-driven systems.

**Dr. Crabb** said what he can offer is comments based only on his personal values and not essential to economic theory. He said essentially if action on repealing this tax leads the state government 'away from' the revenue-driven system, that would be an improvement and would lead to a climate that 'does' attract investment, business with higher skilled labor and higher levels of productivity, and thus higher wages. He said it is not his area of expertise, but when continuing to operate under a revenue-driven system, it will tend to value more revenue and perhaps getting away from that would be a step forward, and be for the better.

**Vice Chairman Rice** said if he understands correctly, having a revenue-driven system will cause resistance in changing from taxes that have more incidence to ones that have less. **Dr. Crabb** said his statement was personal and not based on analysis. He said his statement is, "If you are immediately, when discussing tax policy, thinking about how do I replace the revenue, then you're not taking the approach that leads to high levels of investment and high levels of economic growth."

**Chairman Siddoway** thanked Dr. Crabb for coming and for the time and thought he put into this presentation.

**S 1107**

**Chairman Siddoway** invited to the podium Senator Winder to introduce **S 1107**, relating to revenue and taxation and certain assessment notices sent electronically to the taxpayer. **Senator Winder** said this is a very simple bill brought on behalf of assessors and he deferred to Bob McQuade, the Ada County Assessor. **Mr. McQuade** said this bill is a technical correction to Idaho Code § 63-308 about "valuation assessment notices to be furnished to taxpayer." He said this is the assessment notice the assessor sends out in May to property owners showing the estimated value of their property. He said the problem is that most of the world is set up electronically, but the way the assessors' legal counsel interprets the law, assessors are not prohibited from sending items electronically, but they're not permitted to either.

**Mr. McQuade** said they suggest a change in the statute that would add "transmitted electronically" and permit assessors to send out assessment notices electronically. This would not be 'required' but rather it would be 'optional' for both taxpayers and counties. It would require the affirmative action of the taxpayer filling out an application provided by the assessor asking for electronic notice in counties that agree to do electronic transmission.

**Mr. McQuade** said there is not a lot of information available on this because as far as he could tell, no other counties in the country are doing it this way. He said someone he met in Texas was discussing it, but isn't currently doing it. He said electronic transmission would be an advantage to the taxpayer because they will receive it more quickly and can access the notice anywhere, anytime. Additionally, some businesses get 'stacks' of assessment notices and this format would allow them to put the information in a spreadsheet and pass it on to the appropriate party. **Mr. McQuade** said the cost savings to the county could be significant, as last year Ada County spent \$80,000 in postage and statements for sending out 180 thousand assessment notices. He said if there is even one percent participation in electronic transmission, that would be \$750 in savings.

**Mr. McQuade** said the assessors board, the Association of Counties, Potlatch, Micron and others support this legislation. He said their intention with the passage of this bill is to make the first electronic assessment notices available in Ada County in 2014.



**Senator Werk** asked about some verbiage in the bill, saying it implies that they are sending something electronically to the "last known post office address." **Mr. McQuade** said he reads it as they would 'mail' it to their last known postal address, and this bill would allow it to be sent to the email address, and he reads it as 'either-or.' **Senator Werk** said he feels the language is not precise, but it may be good enough.

**Chairman Siddoway** said when he reads the paragraph as a whole, he thinks it is correct. **Senator Winder** returned to the podium and said he would answer it the same as Chairman Siddoway, that it is transmitted electronically 'or' mailed. **Senator Winder** said the important thing to remember is this is not 'automatic,' it is 'optional' and at the request of the taxpayer.

**MOTION:**

**Senator Hill** moved to send **S 1107** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion. In discussion, **Vice Chairman Rice** said he initially had the same question about the language, but he thinks the language works. Motion carried by **voice vote**. Senator Winder will carry the bill on the floor.

**H 86**

**Chairman Siddoway** invited Mike Chakarun, Policy Manager with the Idaho State Tax Commission (Commission) to the podium to discuss **H 86**, relating to taxes and using certified mail versus first-class mail. **Mr. Chakarun** deferred to Rich Jackson, Chairman of the Idaho State Tax Commission. **Mr. Jackson** said the purpose of **H 86** is to remove the sunset clause from a year ago on H 362, which removed the requirement that the Commission send certain notices by certified mail and allowed the use of first-class mail for such mailings. He said the reason for the sunset was to allow the Tax Commission to collect data to determine the impact of using first-class mail and to assure taxpayers were not adversely impacted by the change.

**Mr. Jackson** said the data presented by the Commission in committee demonstrated that taxpayers' rights to due process have 'not' been affected by the change. He said there have been no claims of inadequate notice by affected taxpayers and the time needed to resolve issues remains statistically identical to when certified mail was used in the previous year. **Mr. Jackson** shared a handout with the Committee, which he described as a "report card" for this process. (See Attachment 2.) He said it compares 2012 and 2013.

**Mr. Jackson** said changing to first-class mail has resulted in over \$100,000 in postage cost savings through the first six months of this fiscal year and the agency is expecting to meet or exceed the annual cost savings of \$200,000 identified in H 362. **Mr. Jackson** said passage of this bill, **H 86**, would allow the Commission to continue the use of first-class mail for certain notices beyond this fiscal year and continue the efficiencies and cost savings demonstrated in this trial period.

**Mr. Jackson** said the notices affected by this legislation include Notices of Deficiency and Notices of Levy and Distraint. He said the Commission does attempt to contact the taxpayer either by phone or first-class mail before the notices are sent. He said the Commission is required to provide notice to the last known address provided by the taxpayer. If notices are returned because of an outdated address, he said the Commission makes a concentrated effort to research and find a current address to re-send the notice. This is the process used whether using first-class or certified mail for the notices.

**Mr. Jackson** said what prompted the Commission to request the change to first-class mail is that the Commission experienced a 35 percent return rate because notices were refused or unclaimed by the taxpayer. The refused and unclaimed notices had to be removed from their original envelopes and resent via first-class mail, which was time consuming, inefficient and costly. **Mr. Jackson** said in addition, taxpayers often complained about the time necessary to go to the post office to retrieve a certified letter.

**Mr. Jackson** said the Commission sent out approximately 100,000 certified notices in fiscal year 2012 and most of these notices were the result of non-filed returns. He also pointed out this bill does not prohibit the use of certified mail. He said the Commission will continue to use certified mail for legal decisions or other instances where certified mail be appropriate or at the specific request of the taxpayer.

**Senator Vick** asked what the return rate was without the certified mail. **Mr. Jackson** answered it used to be 35 percent, but while he doesn't have a specific number yet, it remains about the same, but it is still saving costs and time. **Senator Vick** said he was curious, of the 35 percent that were returned, if half was because of a wrong address or because people saw it was from the Tax Commission and didn't want to sign for it. **Mr. Jackson** answered they could track that 7,400 were refused, but they don't have a tracking for the other issues, and he could research that for Senator Vick if he would like. **Mr. Jackson** said he just knows it has been successful.

**Senator Hill** said he is sure it has been done multiple times, but never noticed it being done this way. He said when H 362 was passed last year, they went in and amended parts of the statute, and now they're being asked to amend last year's bill. He asked why aren't they going back and amending the statute that was amended by last year's bill. **Mr. Jackson** said he can't explain the procedure, outside of what they're trying to do is remove the sunset.

**Vice Chairman Rice** asked if he is correct in his understanding that the Internal Revenue Service has been using first-class mail for these same types of things for years. **Mr. Jackson** said like the Idaho State Tax Commission, certain things will go out certified, but a lot of it is through first-class, and they go through the same fire drill trying to find the latest address.

**Mr. Jackson** said when looking at how can the Commission be more efficient with tight budgets and where can money be saved, this bill is an improvement that will help the citizens and taxpayers of Idaho.

**MOTION:** **Vice Chairman Rice** moved to send **H 86** to the floor with a **do pass** recommendation. **Senator Johnson** seconded the motion.

**DISCUSSION:** In discussion, **Senator Vick** asked Senator Hill if he is comfortable with the way the bill is written. **Senator Hill** said yes, he is, it gets the job accomplished. **Senator McKenzie** said it is helpful to have an 'annotated' code book which shows the history of the bill, and annotations cannot be stricken. He said this bill is not an isolated case.

Motion carried by **voice vote**. Vice Chairman Rice will carry the bill on the floor.

**H 137** **Chairman Siddoway** welcomed Representative Luke Malek to the Committee. **Representative Malek** said he was here to present **H 137**, relating to Urban Renewal Law. He said the bill had unanimous approval in the House committee and the House floor. He said it strikes language from existing statute that allows for an urban renewal agency or agent thereof to enter a building or dwelling inside a urban renewal area, including a private residence. He said there has been no opposition to this bill from the stakeholders, including urban renewal agencies throughout the state. **Representative Malek** said he views it as a private property rights issue, in that if they don't need that power, they shouldn't have that power. He said he doesn't know that it has ever even been used. He said it is updating language to match current practice.

**Senator Werk** said whenever he sees something like this in code, it makes him wonder what the history is behind it, and why it is in the code in the first place. He asked for the history of when and why it was entered into the statute.

**Representative Malek** said he doesn't have a history beyond his own postulation. He said his understanding this law was adopted uniformly from another state and integrated in. He said there is language subsequent to the stricken language that deals with eminent domain; however, this bill has been vetted by urban renewal agencies, and he said they don't believe this bill would affect their eminent domain abilities.

**Senator Werk** said he assumes Representative Malek had discussions with numerous urban renewal agencies to discuss whether or not this has been used in the past, and whether there is a need to find a way to gain entry into dwellings.

**Representative Malek** said he has had conversations with individuals who are crucially involved, but he has not sat down with executive directors or board members of the Capital City Development Corporation (CCDC). However, he said, there has been no indication of any worry that this would harm them.

**Chairman Siddoway** asked if anyone had testified that they had been intruded upon or 'invaded' because of this clause. **Representative Malek** answered no, to the best of his knowledge, he does not know of any individuals who have been affected by this clause.

**Senator Hill** asked what brought this issue to Representative Malek's attention.

**Representative Malek** said last year he was a substitute in the House and a variation of this bill was being carried by then Representative Nonini, and he got involved in the conversation in the House Local Government Committee. He said the Idaho Freedom Foundation had this drafted and brought the issue to his attention again.

**Chairman Siddoway** invited to the podium Erik Mekash, policy analyst of the Idaho Freedom Foundation. **Mr. Mekash** said he has worked on urban renewal policy for many years now, and as Representative Malek referenced, a variation of this bill went to the House but did not get a hearing in the Senate for a variety of issues, including bonding issues relating to eminent domain. **Mr. Mekash** said they helped craft this language in this bill.

**Mr. Mekash** said to answer Senator Werk's question, he actually did meet with representatives from CCDC as well as a group up north and he said they had no opposition. He said to his knowledge, this measure has never been exercised in the districts. He said if someone came into a house, it would be a problem for some people. **Mr. Mekash** said if a district needs to enter a dwelling, they can ask permission or get a court order, as police would for a warrant. He said those provisions remain for local governments to have options.

**MOTION:**

**Senator Hill** moved to send **H 137** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

In discussion, **Senator Werk** said he thinks this measure seems reasonable but he remembers an issue when land surveyors were trying to gain access to property, and there were issues with statutory authority, so he has a similar concern with this bill. He said there may be nothing to it, but he would figure it out.

Motion carried by **voice vote**. Senator Vick will carry the bill on the floor.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:23 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, March 05, 2013**

SUBJECT	DESCRIPTION	PRESENTER
MINUTES:	Review of Minutes From February 7, 2013	<b>Senator Johnson</b>
<a href="#">S 1111</a>	Relating to the Condominium Property Act	<b>John Eaton</b> , Idaho Association of Realtors
<a href="#">H 139</a>	Relating to Income Taxation to provide for a Sourcing Formula to Idaho for Partnership Income	<b>Jonathan Parker</b> , Holland & Hart
<a href="#">H 141</a>	Relating to Exemptions from Property Taxation for Wells drilled for the Production of Oil, Gas or Hydrocarbon Condensate	<b>Senator Rice</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, March 05, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called to order the meeting of the Senate Local Government and Taxation Committee (Committee) at 3:01 p.m.

**MINUTES:** **Senator Johnson** moved to approve the minutes from February 7, 2013. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

**S 1111** **Chairman Siddoway** invited to the podium John Eaton of Idaho Association of Realtors (Association), to introduce **S 1111**, relating to the Condominium Property Act. **Mr. Eaton** said a Ketchum area attorney brought this issue to the attention of Senator Stennett, who sent it to Senator Fulcher, who agreed there may be a problem worth addressing. **Mr. Eaton** said the Association's legislative committee reviewed the concerns and they concurred that a significant issue has been overlooked and needs to be fixed.

**Mr. Eaton** described the history of the legislation about the "declaration for condominiums." He said a "declaration" is different than the "CC&R's" (Covenants, Codes & Restrictions) that are used in subdivisions and neighborhoods. He said Idaho Code § 55-1505 describes "Contents of declaration" to include a legal description of each property, legal description of each unit, and the percentage of ownership in the common area. He said in a condo subdivision, an owner owns what is in the boundaries of their walls. Then, each owner gets a portion of the common area to share the tax burden of the whole property. **Mr. Eaton** said the way that is generally apportioned is by square footage of each condo, which follows the national standard, as well as historical practice in Idaho. However, under current Idaho law, it is supposed to be apportioned based on the value of each unit in relation to the value of the property as a whole, and that each of the units should be reassessed every three years.

**Mr. Eaton** gave an example that under the way the law is written, if someone has two condos of the same size, but one was substantially remodeled inside and had a higher market value, it would pay a larger percentage of property taxes for the common area. He called this process an incredibly difficult thing to administer. He said the gentlemen that brought this issue to their attention said he works for fifty condo associations around the state and only 'one' of them follows this law. He said the members of the Association have never seen it operated this way and have only done the valuation by square footage. **Mr. Eaton** said what is being proposed would allow condo associations to do it either by the valuation method or by the square footage method. He said they feel they should leave the language the way it is for the few who are doing it that way.

**Chairman Siddoway** asked if once a condo association makes the declaration on whether they are going to do it by square foot or by value, if they are locked into that choice for a certain time frame. **Mr. Eaton** replied no, they are not locked in to their selection. He said typically when a builder starts building a condo development, he controls the declaration, so he would write in the option he chooses. Once the building is turned over to the owners, they can change it anytime through whatever their voting process is for that group, just as a homeowner would through their homeowners association. **Chairman Siddoway** said however it is determined will not change their obligation to pay their share. **Mr. Eaton** said that is correct.

**MOTION:**

**Senator Johnson** moved to send **S 1111** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. Motion carried by **voice vote**. Senator Johnson will carry the bill on the floor.

**H 139**

**Chairman Siddoway** invited to the podium Jonathan Parker of Holland & Hart to introduce **H 139**, relating to Income Taxation to Provide a Sourcing Formula to Idaho for Partnership Income. He said he is here representing the firm of Eide Bailly. **Mr. Parker** said **H 139** is based on a year long joint effort led by taxpayers and the Idaho State Tax Commission (Commission), with the support of the Idaho Society of Certified Public Accountants. He also said he wanted to thank Senator Hill for his assistance and guidance in crafting this legislation.

**Mr. Parker** said the bill involves individuals who a) own a business and earn profits in the business, and b) who serve as an officer of the same business and earn a salary for that service. He said for instance, if a business operates as a C or S corporation, this salary to the business owner is taxed to the state where the employee performs the service. However, if the business operates as a partnership or LLC, the Internal Revenue Service (IRS) calls the salary a "guaranteed payment" rather than a "salary," and says the guaranteed payment must be taxed like salary. He said the issue at stake in Idaho is whether a guaranteed payment to an officer should be taxed like a salary where the service is performed, or taxed like a distributive share of partnership income to all states where the partnership operates.

**Mr. Parker** said the Idaho income tax law is based directly on the federal law, and many LLC's have thus followed federal and state codes and paid tax on guaranteed payments as salary, consistent with the practice in C and S corporations. **Mr. Parker** explained the Idaho Tax Commission's position by describing how the Commission has encountered several "abusive partnerships" during audits. He said an example of an abusive partnership is one that 1) operates exclusively in Idaho; 2) has their partners perform services in non-tax states like Wyoming, Nevada or Washington; and, 3) pays their partners through guaranteed payments rather than distributions, thus avoiding all state tax.

**Mr. Parker** said to resolve this situation, the Tax Commission has taken the position that in 'all' audits, guaranteed payments must be treated as a distributive share rather than a salary. However, he said, he believes that casts too broad of a net, as it treats 'all' LLC's as if they are abusive. He gave an example: one entity was operating as a C corporation and paying its CEO a salary, which was sourced to the state where the service was performed for over 30 years; then the entity recently converted to an LLC and continued to pay the exact same salary as a 'guaranteed payment'; the Tax Commission tried to tax the salary differently just because of the entity change. **Mr. Parker** said in response to this, in 2012, the Tax Commission proposed a rule to codify its position, but the Idaho Legislature rejected the rule in HCR 33 because the rule was inconsistent with statute.

**Mr. Parker** said **H 139** resolves this problem by taxing 'guaranteed payments' under \$250,000 as salary and payments 'over' \$250,000 as a 'distributive share.' He said this resolution ensures that taxpayers are not punished by choosing to operate a LLCs, prevents abusive partnerships from moving income inappropriately outside Idaho, and allows predictability and efficient administration for taxpayers 'and' the Tax Commission.

**Mr. Parker** pointed out he believes the \$440,000 fiscal note on the statement of purpose is overstated for two reasons: 1) The fiscal note is based on 2008 returns, where 60 percent of taxpayers were treating guaranteed payments as a distributive share, consistent with Tax Commission instructions and 40 percent of taxpayers were treating guaranteed payments as salary, consistent with the federal and state codes. He said the fiscal note assumes that those 60 percent will now pay less tax (on guaranteed payments 'under' \$250,000), but it has 'not' accounted for the 40 percent who will start paying tax on guaranteed payments 'over' \$250,000. 2) The fiscal note does not consider the savings of clarifying the law and avoiding audits, appeals and costly litigation.

**Senator Hill** asked Mr. Parker if he has worked with the Tax Commission to determine an estimate for a better fiscal note. **Mr. Parker** said he believes the fiscal note should be closer to \$0 because of the distributives are not being collected right now. He said an exact number would be difficult to calculate, but if it is the will of this Committee, he would be willing work on that.

**Chairman Siddoway** asked Mr. Parker to provide an example for the Committee to help the members understand the applications and implications of this bill, and **Mr. Parker** deferred to Senator Hill, who is also an accountant.

**Senator Hill** said the basic principle is whether compensation paid to a partner for services provided is taxed as part of profits of the business or taxed as compensation. **Senator Hill** offered this example: There is a business partnership with three partners, in an LLC, since general partnerships have fallen out of favor. The LLC is taxed as a partnership. The business makes \$50,000, before anyone takes wages out for services provided. Partner One lives in Wyoming, because it doesn't have state income tax, which is where the problem typically comes about. Partners Two and Three live in Idaho. All three partners put in an equal amount of effort working full-time in the stores they have in both Idaho and Wyoming. Each of the three partners makes a \$10,000 salary. If it were an S or C corporation, they would get a W-2 for the salary. Compensation paid, even to owners, is subtracted from the earnings of the business, to determine what earnings are left to be distributed among the partners as business earnings.

With each partner getting \$10,000 salary, they each report it as income. Partner One reports it as Wyoming income, since that is where he was living and performing the services. Partners Two and Three would report their \$10,000 each as Idaho income, since they were living and performing services in Idaho. The next step is to subtract the \$30,000 (\$10,000 times 3 partners) from the \$50,000 profits, and that leaves \$20,000 to be divided three ways among the equal partners, which is about \$6,700 each. That \$20,000 to be split three ways has to be apportioned to the owners as far as what state that is taxable in, based on an attribution schedule or apportionment schedule. That schedule is a little different from state to state but is generally based on three factors: Gross sales by state, gross payroll by state, and property and inventory by state.

Those three factors are used to determine what portion of the remaining business income is apportioned to Idaho versus Wyoming. To keep it simple with this example, assume that two-thirds of the partners live in Idaho and two-thirds of the sales and everything else are in Idaho, and one-third is in Wyoming, with three equal stores; two in Idaho and one in Wyoming. That means two-thirds of the \$20,000 will be taxed to Idaho and one-third will be taxed to Wyoming. Partner One in Wyoming is the only one concerned, because he will have \$10,000 in wages taxed only in Wyoming and he will have \$6,700 distributive share of remaining income that will be taxed according to that attribution formula. That means one-third of the \$6,700 will be taxed in Wyoming, but two-thirds of that \$6,700 will be taxed in Idaho. Partner One will then file a non-resident tax return in Idaho and pay taxes on that \$4,400, which was two-thirds of his distributive share of the income of the business.

**Senator Hill** said that is the way everyone thought it worked. That is how it works if it's an S or C corporation. That is the way they thought it worked in a partnership. However, with the rule change last year, the Idaho State Tax Commission was proposing that not only the distributive share, but also the partners' wages must be applied to Idaho in the same attribution schedule. So, now instead of reporting \$4,400 to Idaho, he also has to report two-thirds of his \$10,000 salary as income in Idaho. Therefore, Partner One is paying a lot more in taxes to Idaho.

**Senator Hill** said it makes no difference to the Idaho resident, because they have to pay tax on all of his income regardless of the source. If he has income from another state, he will pay income tax on that in another state, if the other state has a tax. This only makes a difference to a nonresident who would now be taxed on compensation as well as his distributive share of the earnings based on that attribution formula.

**Senator Hill** said this bill would continue to allow the \$10,000 that is paid for services performed in the other state to 'not' be taxed in Idaho, but 'not' more than \$250,000. There was the concern that when getting into big numbers, there will be temptation to manipulate the numbers and get more in compensation and less in distributive share, which can be done sometimes if there are unequal partnerships or people working different amounts in different compensation levels, but it is a difficult thing to manipulate.

**Senator Hill** said the \$250,000 limit on compensation is designed to give the bill a "backboard" so the system cannot be subject to manipulation by an abusive accountant. Anything that partner is paid over and above \$250,000, even if it is for services rendered, would be taxed to Idaho based on the attribution formula.

**Senator Johnson** asked if, in this example, Idaho would not tax the first \$250,000 from Partner One in Wyoming. **Senator Hill** replied, not exactly. He clarified that the first \$250,000 in 'compensation' would not be taxed in Idaho. There is no limit on the amount of distributed share or earnings left in the business that are taxed to the owners. That will be taxed to Idaho in relation to the attribution formula.

**Senator Johnson** asked if is not 'distributive' but a 'salary' then the first \$250,000 would not be taxable in Idaho. **Senator Hill** said that is correct. **Senator Johnson** asked if it matters if the company is based in Idaho. **Senator Hill** replied, no it does not matter. The attribution schedule is based on "how much business, how much property, how much payroll" is in each state. It makes no difference where the state of residency is for the business.



**Senator Johnson** asked if the individual lives in a state that does not have income tax, would that make a difference to the state of Idaho. **Senator Hill** replied that is the example he used, in that Wyoming does not have income tax, just as Nevada and Washington do not. That is why it is an issue in Idaho, as with the scenario he described earlier. If a state 'does' have income tax, and it is taxed in Idaho, a Utah person for example 'would' get a tax credit on his Utah tax return.

**Senator Johnson** asked if that individual left Wyoming and came to Idaho and did some work in Idaho, would that be considered salary or part of distributive sharing. **Senator Hill** answered that would be considered salary. He said sometimes someone will receive a W-2 while working for a big company with offices in more than one state, and it will have a break down for their work of three months in one state and nine months in another state, and there will be withholding on that particular state's income based on where the services were performed.

**MOTION:** **Vice Chairman Rice** moved to send **H 139** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion.

**DISCUSSION:** In discussion, **Senator Johnson** pointed out that earlier Senator Hill made a statement about fiscal impact, and trying to get a more precise number. He said the Committee heard from the presenter that impact could actually be closer to \$0, which is of interest to him. He said he would like to see the impact as low as possible, and he also would be concerned if this bill went to the House with a fiscal impact of \$440,000 and then it changed in the Senate to \$0 in reality. **Chairman Siddoway** said that should be addressed. **Senator Hill** said Senator Davis says "we vote on bills and attach Statements of Purposes" and they become points for debate if people agree or disagree on the fiscal impact, but it doesn't change the bill itself. However, he said, this is relevant because in JFAC, these fiscal impacts are subtracted from the amount that can be appropriated. **Senator Hill** said if the Committee does decide to send this forward with a do pass, he would like to ask Mr. Parker to work with the Tax Commission on a better number and let the Senate vote as a whole based on the information they can give. **Senator Johnson** said that would suffice his concerns. **Chairman Siddoway** said they will work on getting a more accurate fiscal note attached to this bill before it goes to the floor.

Motion carried by **voice vote**.

**H 141** **Chairman Siddoway** invited Vice Chairman Rice to introduce **H 141**, relating to exemptions from property taxation for wells drilled for the production of oil, gas or hydrocarbon condensate. **Vice Chairman Rice** said this bill arose out of a discussion between Payette County and the Idaho State Tax Commission (Commission). **Vice Chairman Rice** said the Commission advised the county that the casing of an oil or gas well should be taxed as personal property, based on the cost to drill the well. That advice ignored nearly a thousand years of legal history dating clear back to 1066 in England.

**Vice Chairman Rice** said a well is part of the real estate. He said in this particular instance, it is also not something that is determinative of value. He gave an example of going into a convenience store and purchase a fountain drink and pay for the drink, it doesn't matter if there is a straw in the drink or not, as it will be the same amount of sales tax. He said that is similar to the way oil and gas has been set up in Idaho. He said the legislature passed legislation last year that stated when there is a gas or oil well, every parcel that overlaps the pool of oil or gas from which that well draws, partakes in the revenues from that well. The royalties would go to all of those parcels.

He said there might be eight or ten parcels on top of the same pool, but only one of them will have the well. All of them will have an increased overall value of the parcel because of that producing well. All of those parcels will go up in value, and so will the real property tax, because they would sell for more because of that well. It would be based on how much of that pool is under their parcel. The well itself is irrelevant to the real property tax. He said there is not real property tax based on something other than what the parcel will sell for. That still holds true in situations where the mineral rights have been severed from the surface rights on a parcel because those are two parts of the real property. They would add up to the same value either way and both would be subject to the real property tax.

**Vice Chairman Rice** said in addition to the parcels being taxed, oil and gas are taxed in a severance tax, which the legislature set last year. He said regardless of the different feelings about the severance tax, it is a uniform tax. Real property taxes are a uniform tax, and this exemption does not affect either of those taxes. This bill does make clear that "we won't go tacking stuff on top" that doesn't belong on top of other taxes, such that real property is not "double taxed." He said this also prevents changing a definition by some "creative reasoning" to not match the law. He said that is the actual effect of this exemption. He said it is listed as an exemption just to make it clear, but it does to eliminate or change those other taxes already in place.

**Senator Werk** said he did a lot of research surrounding this and he agrees with Vice Chairman Rice in that the hole and casing in the ground should not be taxed as property. He said, however, he would challenge the fiscal note. He said there may be no impact to the state, but there never 'would' be because this is a property tax issue, and there was never guidance for local government to tax a well like this. He asked if water wells were ever taxed, and **Chairman Siddoway** indicated no. **Senator Werk** said he thinks the fiscal note should be changed to reflect the local government impact.

**Vice Chairman Rice** said Senator Werk is correct in that this bill does not have an impact on local governments since they wouldn't have been authorized to tax these wells as having independent value. He said there was some discussion in the House about the possibility that Bonneville County was taxing irrigation wells. He said he visited with Representative Trujillo, who works for Bonneville County, and he said she said they are not coming up with a different value for the parcel, but they are going through and itemizing some things 'in' the parcel and saying they have a portion of the value. He said they are still coming up with the same total value of what the parcel, with its improvements, would sell for to a willing buyer. He said they are not actually 'taxing the well' but they are listing them as a component of the overall price they come up with, which is reasonable in the first place, but not actually necessary.

**Senator Vick** said he realizes this is not 'directly' related to this bill, but he is curious about how property taxes are paid when mineral rights are separated from surface rights. **Vice Chairman Rice** said this usually shows up in mining properties. He said there is an actual minimum value per acre for mineral rights when they have been severed from the fee, and he said he believes it is \$5 per acre if it has value but "you can't tell exactly what it is." He said in this instance, there are a number of ways mineral rights on a producing situation could be valued and sold for, which would be based off the royalties paid. He said they could also look at similar parcels that didn't have a well from which gas or oil was being drawn and compare them to similar property that did not have a well. He said the difference would be noted and that difference would be attributed to the mineral rights. He said that would be another way of coming up with an accurate number.

**Senator Vick** asked if the owner of the mineral rights get taxed, so there are two tax bills on that piece of property. **Vice Chairman Rice** answered that is correct, whoever owns that portion of the fee would be responsible for that portion of the tax. He said when "we divide up as tenants in common," only one tax notice is sent out to whomever is designated.

**Senator Werk** asked, for the record, that equipment and things of value that are "above ground level" and used for the development of a well, are to be taxed as business personal property. **Vice Chairman Rice** said that is correct. He said he used the word "well" deliberately because it does 'not' include pumps, connecting lines, drilling rigs, or other things, because they are not the "well." He said they may be 'related' to the well, but they are not 'the well.'

**Senator Werk** said, to be clear, what is being exempted here is the hole in the ground, and "that's it." **Vice Chairman Rice** replied yes. **Senator Werk** said he did not know if the Committee would desire to change the fiscal note to indicate there is no impact to local government operations. **Chairman Siddoway** replied there are some people from local governments here to testify, so we would see what they had to say, and if a revision is needed, they could do it.

**TESTIMONY:**

**Chairman Siddoway** invited Georgia Plischke, Washington County Assessor, to the podium. She said she has some questions about **H 141**. **Ms. Plischke** said assessors are not usually in favor of exemptions as they tend to "shift," even though this one does not seem to "shift" as it is a new exemption. She said she attended several hearings in Washington County where the local ordinance for the petroleum industry was discussed. She said it was stated several times by Bridge Energy, Wiser Brown, Snake River and others, that they want to be good neighbors and pay their fair share of the taxes. **Ms. Plischke** said, "And here we are already looking to an exemption."

She said she believes this legislation paints a broad description and she would like to see a more detailed description of what a "well" is. She said there is the casing, the well head, and everything above. She said it is her understanding that this is "just the hole and the casing" and it would be more clear if there was a more definite description in the language.

**Ms. Plischke** said in her research, she found that Colorado, Texas and Louisiana do assess the entire well, including the hole with the casing or the tubing and the well head. She said Texas and Louisiana use the cost approach, which is also an approach to determine value that is used in Idaho. She said Colorado includes the casing and tubing as part of the land or the leasehold.

**Ms. Plischke** said she urges the Committee to clarify the bill, or hold it to give more opportunity for clarification and allow the oil industry and gas industry the opportunity to be the good neighbors they want to be and pay their fair share of taxes.

**Senator Werk** said Idaho's immediate neighbors, Wyoming and Utah for instance, do not tax the well itself, but unlike Idaho, Wyoming and Utah charge a property tax on the property - the oil and gas - that is being 'removed' from the well. He said that is how the counties benefit from having oil and gas exploration. He asked if the only benefit derived for the county from oil and gas exploration is through an assessment on personal property. **Ms. Plischke** said at this time, that is correct, it is personal property tax, as in Payette County, which she said is the only one she knows of in this situation. She said she contends that it could be part of the land, just as the residential wells are assessed throughout the state on a cost comparison.

**Chairman Siddoway** invited Amanda Buchanan to the podium. **Ms. Buchanan** said she represents herself as a resident of Washington County. She said she agrees with the county assessor that the bill is pretty vague and more clarification about what exactly a well is would be appreciated. She said at the same time, it is important to recognize that the casing of the well is incredibly valuable. She said it costs about a million dollars to put in a well. She said, as the assessor stated, other states do assess this value as personal property tax. **Ms. Buchanan** said there is a formula used to calculate the well depth and multiply it by how much it costs for each foot to install the casing and by how much it will depreciate. She commented, "You could say well, the big bucks will be coming when you get the stuff out," but in the meantime, she said what is coming for local governments is trucks come to do the drilling, all this traffic, all these people, and then the well is capped, and the local governments have to wait for the big money that is going to come. **Ms. Buchanan** said in fairness to counties, if they are going to be absorbing the cost of drilling, perhaps they should also be able to get some revenue in the form of personal property tax on the casing of the well.

**Chairman Siddoway** invited Michael Christian to the podium. **Mr. Christian** said he represents AM Idaho, which is one of the operators in the Payette basin. He said Senator Rice covered the meat of the bill quite well, but there is one thing he wanted to point out in relation to the benefits of the local counties. He said when there is production, a portion of the severance tax is specifically directed to the counties and cities where production occurs. He said, as Senator Werk observed correctly, when the point of producing is reached, they will have to build infrastructure to get the gas to market, like gathering lines, compression-dehydration facilities and other above-ground equipment, which will be subject to property tax to the counties' benefit.

**Senator Hill** asked what percentage of the severance tax goes to the local taxing districts. **Mr. Christian** said the total severance tax is 2.5 percent. Of that, 60 percent goes to fund the Department of Lands program, or essentially the general fund. The other 40 percent is divided up, with 28 percent going to the counties where the drilling occurs, 28 percent going to the cities where the drilling occurs, 28 percent to the schools, and the last 16 percent goes to a local development fund to be used in the future to offset adverse economic impacts from a downturn in the industry. He said that last piece has been the subject of some discussion. He said he thinks it should be given to the counties and cities immediately to do with what they see fit, but that is a debate for another day.

**Senator Werk** said what is being discussed is an exemption on the actual value of the well itself and if the personal property tax is repealed, then there will be no value to the counties, other than a severance tax. He said, when there is development in other states, there would be a property tax levied that would be placed on the product that came out of the well. He said it seems like starting down the road for exemption, but not starting down the road for any kind of revenue that will go to counties to help cover costs of additional roads and road maintenance from large trucks driving on them. **Senator Werk** asked Mr. Christian for his thoughts on this.

**Mr. Christian** said his observation is that different states do it in many different ways. He said Senator Werk is correct in that some states do impose a tax on the mineral interests, done on a production basis. He said Idaho does it differently, as Vice Chairman Rice described, such that the assessors will derive revenue at the point which production occurs and royalty payments are made.

**Mr. Christian** said the value will be based on the income and property taxes will then be assessed and paid by the landowners, whether joined or severed. He said yes, there are different ways to do it and whether it becomes a different amount at the end of the day depends on "the scheme" proposed.

He said there will be other considerations in the future as well, including what "bells and whistles" are attached, such as holidays to allow the operator to recover their costs, incentives for exploration wells, and other items that go into determining the effective rate. He said he cannot say today what the outcome of real property tax assessed on a producing interest here based on royalties generated looks like in comparison to a tax that is intended to cover the same thing in another state. He said he suspects it will be in the same ballpark, but that is an analysis that needs to happen down the road as the industry develops in Idaho.

**Senator Johnson** said he was looking at the language and had concerns about a pitfall in the future and he asked Vice Chairman Rice if there would be value in clarifying the definition of what a "well" is, and what kind of property a well is, whether real property or personal property. **Vice Chairman Rice** said if he were to go into a second grade class and ask what a well is, he would get a picture that includes the stone casing of a wishing well. He said "well" is a very well understood word and has been for much longer than legal history. He said wells go clear back into old testament times. When there are discussions of wells, people know what a well is. He said from a legal standpoint, it is a very clear specific word. **Vice Chairman Rice** said when he was a kid, they had a well for their house and a pressure tank. He said they knew the pressure tank was not the well and the thing the pipe attaches to is the pressure tank, and also not "the well." He said he does not think additional language is required.

**Senator Johnson** asked again about clarifying the term "property" and whether that should specifically state personal or real for future discussions. **Vice Chairman Rice** said he doesn't think it would be necessary. He said a well has always been considered real property in jurisprudence and well-established legal history. It doesn't change that by calling it something else. He said from time to time, people will call roses by another name, but they're still roses. He said it is better to say "the well is exempt" and leave it at that and not try to say, "you can't tax it as this, then someone will say can you tax it as that if you call it by another name."

**MOTION:**

**Senator Rice** moved to send **H 141** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion.

In discussion, **Senator Werk** asked to distribute a handout of ancillary information about how Utah taxes their oil and natural gas. He wanted to pass it out to show that he does think this is reasonable policy associated with the well in the ground and he does not have an issue with it. He said he does have a pretty large issue with the fragmented nature of how things are being done with the oil and gas industry. He said it is a nascent industry in Idaho and he is seeing neighboring states gaining substantial value to support their school systems. **Senator Werk** said he spoke with a tax man in Wyoming and how the oil and gas boom had allowed them to fund their schools in a dramatic way. He said his fear is if Idaho does not decide it is worthy of taxing, besides severance tax, the riches of the state is then withdrawn and sold; Idaho will lose the opportunity and become poorer for it, rather than richer for it. He said he is not "making noise" about this particular bill, because he says it is reasonable.

Motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:02 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Wednesday, March 06, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 184</u></a>	Relating to Income Tax and Net Operating Losses	<b>Ken McClure</b>
<a href="#"><u>H 187</u></a>	Relating to Use Tax Exemptions on Free Food Samples	<b>Roger Batt</b>
<a href="#"><u>S 1138</u></a>	Relating to the Local Planning Act to provide clear decision making criteria and a process of review to ensure protection of private property rights and due process.	<b>Senator Tippetts</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Wednesday, March 06, 2013  
**TIME:** 3:00 P.M.  
**PLACE:** Room WW53  
**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) meeting to order at 3:00 p.m.

**H 184** **Chairman Siddoway** invited Ken McClure, Attorney with Givens Pursley, to the podium to present **H 184**, relating to income tax and net operating losses (NOLs, NOL). **Mr. McClure** said there is a problem with Idaho law in the way it deals with NOLs. He said there have been more businesses that have had the privilege of having net operating losses, which is when a for-profit company did not turn a profit, allowing the business to deduct the amount of the loss against income in other years. It can be carried back or carried forward, but only if a specific box is checked on the tax return. If the box is not checked to carry the NOL 'forward', it must be carried 'back'; it can only be carried back two years. **Mr. McClure** said unfortunately, many people, or their tax preparer, forget to check that box and will lose the deduction if they did not have enough income to cover it in the previous two years.

**Mr. McClure** said taxpayers should be able to use the NOL however they are entitled to use it, and that is what this bill provides, without any need to check any box. He said this simplifies the tax code. **Mr. McClure** said he brought two practicing accountants with him to testify if the Committee has specific technical questions.

**Senator Hill** asked about why a section is being stricken in the first part of the bill and then reinserted later. **Mr. McClure** said this bill was drafted in conjunction with the Idaho State Tax Commission (Commission), and that is the way the Commission wanted it. He said it is their language and is easier for them to administer that way.

**Chairman Siddoway** asked if someone misses that one small box on the five page form, does that mean they are not eligible. **Mr. McClure** said under current law, if someone didn't check the box, they may not 'ever' fix it. It is an 'incurable' choice. It may never be fixed to be carried forward for the next twenty years, as they would be entitled to otherwise. If the box is checked, they 'must' carry it 'forward' and it may not be carried back. He said the choice the Committee could make, as Idaho's tax lawmakers, would be to check the box to carry it forward, but **Mr. McClure** said that doesn't seem to make sense either. He said this bill provides that when someone has an NOL and did not take advantage of an amended return, it can be carried forward or back in a future year. It gives the taxpayer flexibility to do whatever is in the taxpayer's best interest without creating an artificial requirement that many have stumbled on in the past.

**Vice Chairman Rice** asked if the "check-the-box-thing" was part of a rule rather than statute. **Mr. McClure** said it is actually 'in' statute on line 35, "at the election of the taxpayer," and the election is made by checking the box. If an election is not made at that time, under current law, taxpayers are constrained to carry it 'back' only. **Mr. McClure** called it an "odd requirement." He said in speaking with accountant Matthew Grow, he asked, "I want to make it clear. Can I amend my return and go back and check the box," and Mr. Grow said, "No, you can't do that. Once your return is filed, it's an irrevocable election." **Mr. McClure** said that is why they are trying to remove the irrevocable election.

**Senator Hill** said besides the point of that 'one box' being irrevocable, a taxpayer can amend almost anything else, and that makes it a practical problem for practitioners and taxpayers, especially for businesses posting a loss. Often they will wait until the last minute to get that filed, and then they say, "Well, after tax season is over, come in and let's talk about if we want to carry this back or let's sit down and see what the options are for carrying this forward." **Senator Hill** said the current law forces taxpayers to make that decision at that moment in time when that tax return is filed, and sometimes they don't have the time or resources to take everything into consideration. **Senator Hill** said he thinks this is a really good idea. **Mr. McClure** said thank you.

**Mr. McClure** added that if a taxpayer is forced to carry the NOL 'back' because they didn't check the box, it can only be carried back for the prior 'two' years, and they may not have enough income in those prior two years to absorb the deduction. If it is allowed to be carried forward, hopefully there will be a time in the coming twenty years that the NOL can be used. He said, "When it bites you, it bites in a bad way and it's unnecessary."

**MOTION:**

**Vice Chairman Rice** moved to send **H 184** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

**H 187**

**Chairman Siddoway** invited Roger Batt, Executive Director of the Idaho Heartland Coalition, to the podium to present **H 187**, relating to use tax exemptions on free food samples. **Mr. Batt** said the Idaho Heartland Coalition has a strong membership base from several sectors of agriculture across the state. He said they focus on working for regulatory reform issues as they pertain to the agricultural industry.

**Mr. Batt** said last year, the industry presented legislation H 489 to exempt free samples of beverages, which included wine and beer, from the payment of use tax. He said the legislation was in response to a 2011 letter from the Idaho State Tax Commission. The letter mandated Idaho businesses to go back three years into their records and pay use tax of six percent on all free samples that were given to potential customers. Both the House and Senate passed H 489 and it became law in 2012.

**Mr. Batt** said during the presentation of that bill last year, the same question was asked several times, about why free food samples were not also included in that bill. He said their response was they tried, but the Tax Commission would not allow it because it was uncertain what the fiscal impact might be.

**Mr. Batt** said **H 187** is the legislation that the Tax Commission and the industry drafted together and are in agreement upon. It amends Idaho Code § 63-3621 to do the following: 1) It quantifies a tasting of wine or beer as a maximum serving allowed by state or federal law, which was forgotten in last year's legislation. He said current Idaho statute allows a maximum of two ounces of wine and federal law allows a maximum of eight ounces of beer to be served as a tasting. 2) It exempts tastings of food from the payment of use taxes.



He gave some examples of situations that would now become exempt from paying use tax: a vendor at a farmer's market selling a product and giving visitors a taste; Chobani Yogurt handing out samples; Costco providing tastings of food to shoppers on a Saturday afternoon shopping trip; the local fruit ranch operator cutting slices of apples and sharing with visitors to eat. 3) It defines a tasting of a non-alcoholic beverage or food as a "sample from a unit available for sale at the tasting location."

**Mr. Batt** said the fiscal impact from this legislation is unknown. He said he asked the Tax Commission if it could be quantified and was told it could not be. He said that is why the fiscal impact is listed as "de minimus" which is the same fiscal impact placed on the beverage bill last year. **Mr. Batt** explained there is also an emergency clause in the legislation to allow the exemption to apply upon the signature of the Governor, as retailers will continue to hand out tastings of food to consumers before July 1.

**Mr. Batt** pointed out it is also believed that the collection of use tax from tastings of food is difficult to administrate and can be very onerous on business owners who may, at some point, be asked to go back years into their records and pay use taxes on free samples given to potential customers. He said he believes **H 187** sets good tax policy for the state of Idaho and business owners.

**MOTION:**

**Senator Hill** moved to send **H 187** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. Motion carried by **voice vote**. Senator Bayer will carry the bill on the floor.

**S 1138**

**Chairman Siddoway** invited Senator Tippetts to the podium to introduce **S 1138**, relating to the Local Planning Act to provide clear decision-making criteria and a process of review to ensure protection of private property rights and due process. **Senator Tippetts** said he was approached several months ago by a group of residents in Teton County. They expressed to him their frustrations with the local land use planning process in their county. He said one of their primary concerns was that in some areas of the county, it is already very difficult to get approval for building or development, and multiple new overlay zones have been proposed that would add to the problem. He gave some examples of the overlay zones: big game migration corridors and seasonal range; water bird migration, foraging habitat; water bird breeding, migration, foraging, wintering habitat; songbird/raptor breeding and wintering habitat; sharp-tailed grouse breeding and wintering habitat; priority wetland habitat; and, perennial and seasonal trout habitat.

**Senator Tippetts** said landowners and developers expressed they weren't sure what they needed to do to comply with zoning requirements. He said some had gone to great expense over an extended period of time only to find they were denied permits to build, and they were left wondering exactly what they would have to do to be allowed to build – if that were even possible. **Senator Tippetts** said some suggested changes to the zoning laws were considered by some to go too far, limiting the ability of cities and counties to enact appropriate zoning measures.

**Senator Tippetts** said interested parties joined together to find a solution, noting that he doesn't take credit for the work they did, but he thinks it is a great resolution. He said with input from cities, counties and landowner representatives, the group reached consensus on the legislation in **S 1138**. The bill does not seek to strip local government of its planning authority; rather, it codifies some best practices related to local land use planning, which will be described by Jerry Mason momentarily.

**Senator Tippetts** noted the bill doesn't include everything some county residents had wanted, but he said they believe it will still be a significant help to them. He said city and county representatives support the legislation because it makes some important improvements to the language in the code dealing with zoning ordinances.

He said he is not aware of any opposition to this bill. He noted that Dennis Tanikuni is home sick but specifically asked him to mention that the Idaho Farm Bureau supports this bill. **Senator Tippetts** deferred to Jerry Mason to continue the presentation.

Jerry Mason with the Association of Idaho Cities approached the podium. **Mr. Mason** said the group he represents believes this bill is an opportunity to add some best practices to the Local Land Use Planning Act in a way that benefits property owners, permit applicants, and neighbors, making the process more functional for everyone. He said he would walk the Committee through the bill, **S 1138**.

**Mr. Mason** said the first section is in response to concerns that overlay zoning districts were being applied in some instances without clear enough standards. This bill adds language that requires the zoning ordinance contain "clear and objective standards" for evaluating applications. He said that is a basic principle for any regulation. He said when establishing requirements for a permit, it should be clear what an applicant needs to do to obtain it. **Mr. Mason** said the second part of the amendment to in Idaho Code § 67-6511 emphasizes that overlay district standards must "not constitute a regulatory taking" pursuant to Idaho or federal law.

**Mr. Mason** said the next section of the bill, an amendment to Idaho Code § 67-6522, is in response to property owners' concerns that some jurisdictions established rules that covered the same subject matter as the existing state or federal rules or health districts that applied state adopted rules. He said local jurisdictions would have another set of ordinance requirements that, once the permit is obtained from a state agency or the health district, the builder still would 'not' necessarily be good to go, because they may face 'different' requirements that may conflict with those state requirements. He said the bill adds the language that says, "in no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency." He said obviously federal and state law is superior to local law.

**Mr. Mason** said section three is about a clear statement of approval standards and the criteria for approving or rejecting a permit application. It requires that the approval standards need to be set forth in express terms in the ordinance. He said it cannot be "I like it or I don't like it." The question must be if it complies with the objective ordinance requirements. He said in some instances, they cannot be objective, as when a decision is based on accordance with a comprehensive plan, which is sometimes a judgment call. **Mr. Mason** said the compliance needs and statutory requirements that the permit issuer requires must be addressed in the written decision. If they are not addressed in writing, the decision is subject to being overturned.

**Mr. Mason** said one subject that has been repeatedly addressed by permit applicants is that once a permit is approved in final decision, any affected person claiming they are aggrieved can file an appeal. The appeal can go to the district court and potentially the supreme court, which can take 18 to 30 months. While that appeal is proceeding, the property owner is in limbo. The reconsideration provision in this bill is designed to say if someone has a concern about the decision made in a certain matter, it should be addressed to the local decision makers who are closest to the matter and made the decision regarding it. He said now, in order to bring an appeal to the courts, one must first point out the alleged error to the people who first made the decision.

**Mr. Mason** said some people fear this could make the process take longer, but he said his experience in speaking with attorneys on both sides is they would like to see the issues clarified and decided "as quickly and locally as possible." He said **S 1138** provides that within 14 days of the final decision, they have to specifically identify the basis for claiming the decision is improper and the decision makers have a maximum of 60 days from the date of the request for reconsideration to evaluate the grounds stated and either affirm, modify or reverse their decision. He said if the decision makers affirm their decision, that can be done in as few as three to five days.

If they decide that the request has merit, the local government can reopen the matter and have another hearing and make a final determination within a maximum of 60 days. **Mr. Mason** said that is an effort to try to keep the decision making local and prompt, and within the jurisdiction in which the issues arise, rather than in the supreme court hundreds of miles away.

**Mr. Mason** said there still may be other issues that have not been fixed in this bill, but the goal of this legislation is to address the need for clear decision making points in ordinances; written decisions; and effective, time-efficient, cost-efficient resolution of problems at the 'local' level.

**Vice Chairman Rice** asked if the judicial review is de novo or appellate. **Mr. Mason** answered that it is appellate. The record is compiled and forwarded to the district court. **Vice Chairman Rice** asked if this poses a burden for unsophisticated landowners who represent themselves and don't initially identify a problem with the decision and raise a different issue than they should have. That landowner then contacts an attorney to appeal to district court. He asked in a case like this, would their right to appeal be waived in this language.

**Mr. Mason** said yes, as with anyone who does not raise a valid objection in the appropriate time, that would be the case. He said the current statute only provides 28 days, and all it takes is the cost of a complaint to be filed and a matter is locked into the courts until the matter is settled. **Mr. Mason** said the intent of the bill is to require that if errors are made, they need to be identified promptly.

**TESTIMONY:**

**Chairman Siddoway** invited Roy Molton, attorney from Driggs, to the podium. **Mr. Molton** said he has been practicing law in land use planning for 30 years. He said what initiated the attempt to amend the Local Land Use Planning Act was a redraft of the comprehensive plan that created overlay districts for wildlife management. He said given his experience with the administration of conditional use permits, he was extremely worried the process would be hopelessly subjective.

**Mr. Molton** said this bill didn't end up being what he would like to see, but it is helpful, because it requires local governments, whether city or county, to come up with a list of do's and don'ts so applicants can objectively determine what will need to be done to file the application before they file it. He said he served a term on the Fish and Game Commission, and it disturbs him that local government has been allowed to get into resource and wildlife management. He suggested, based on his experience, a committee should be assigned to come up with criteria for the overlay districts, which can be onerous. He said it is better to be affirmed and known than subject to an arbitrary process of applying, "only to have every Tom, Dick and Harry say what they think should be restricting that application." **Mr. Molton** said even though this bill is not everything he'd like, he still highly encourages a do pass recommendation.

**Vice Chairman Rice** asked Mr. Molton to share the top two or three specific weaknesses he sees in this bill. **Mr. Molton** said the Local Planning Act grants all the authority to local government to impose regulations that manage property owners' property so long as there is any economic value left, even if it is not profitable. He said there may be dry grazing ground that is essentially worthless and isn't profitable, and the owner may wonder why paying taxes on it even justifies owning it, but it still meets the regulations for management.

He said the better answer is yes, he would fundamentally alter the Local Planning Act itself so it allows local government to regulate in the areas of health, safety and nuisance. He said when local government gets into the business of "the common good," there is no end to it. He said they are only protected by the elected officials in place at that time. **Mr. Molton** said, "Let me suggest to you that a person living on a postage stamp in his house has a very different view than if he's a significant landowner." He said the legislature has responded to the Local Planning Act with the Right to Farm Bill that protects farming, but there are other areas that aren't protected in the business of land ownership.

**Senator McKenzie** asked if this bill is creating a standing for an organization or person who wanted to oppose the use of a piece of land. He said the bill provides that an "affected" person has the right to appeal the process. He gave an example, suggesting if he gets a permit to use his land in a certain way, and some organization wants to prevent that type of use, or any use on that particular land, and that organization considers itself "affected" persons, does this bill change whether or not they have standing to appeal the decision and make him go through the process.

**Mr. Molton** answered he does not think it changes the group who has standing to appeal. He said it might reiterate it, but doesn't create a new category. He said it is plenty broad in the planning act who is an interested party and has sufficient interest to appeal.

**Senator McKenzie** said the bill says if one wants a decision on a request for reconsideration, a written response shall be provided to the applicant or affected persons within 60 days of receipt of the request for reconsideration. He said it says a decision shall not be deemed final for purposes of judicial review until the process required has been followed. **Senator McKenzie** said in other statutes he has seen the language, "either upon completion of the process or the expiration of the 60 days." He asked what happens if there is not a written response within 60 days, if the intent is that they would then have a chance to appeal, or must they wait until a decision comes back in order to start the appeal time frame.

**Mr. Molton** said he believes the way it is written, one has 28 days in which to appeal the final decision of the board. He said it is possibly a 60 day period, but as Mr. Mason said, it doesn't have to take that long. **Mr. Molton** said Senator McKenzie's concern is legitimate, because one of his concerns in representing applicants is that the process can drag on for a long time, and this potentially adds another 60 days to the process. He said it does not add meaningfully to the overall time it takes to process an application and deal with whatever appeals may come from that.

**Senator McKenzie** asked if the 60 days have passed, and there is no written response, does the affected party have the right to appeal at that time, or do they still have to wait for the written decision on the reconsideration. **Mr. Molton** said an applicant has 28 days after a final decision, so it presumes a final decision already. It just gives them an additional process in which they can ask them to reconsider.

**Senator McKenzie** restated his question again. He said when a motion for reconsideration is presented, it sets a time frame to get back a response, which is within 60 days, and the bill says a decision is not final for purposes for judicial review until the process required in this bill has been followed. **Senator McKenzie** said his question is: if those 60 days have passed and the written decision response to the request for reconsideration is not issued within that timeframe, does the party then have the right to seek judicial review or do they have to 'wait' for the written response. **Mr. Molton** said there may be others with a different opinion, but he thinks they can file the appeal immediately after the passage of the 60 days, but at least within 28 days.

**Senator McKenzie** said typically if one has to exhaust their administrative appeals, this bill is saying a decision is not final for purposes of judicial review until the process required in the subsection has been followed. He said it suggests to him that one has to get the 'written response' before they can go to the court for judicial review. He said he is not certain if he is reading that correctly and invites anyone who might know to help clarify.

**Vice Chairman Rice** said he has seen a number of these and they would 'not' be able to appeal until they have a written decision, and they would have to bring a writ to 'force' them to issue a written decision. He said that is a flaw in the language.

**Chairman Siddoway** invited Meagan Leatherman, Ada County Director of Development Services, to the podium. **Ms. Leatherman** said the Ada County Board of Commissioners is in favor of **S 1138**, as is the Idaho Association of Counties. She said they appreciate law that clarifies expectations and sets a level playing field for everyone. She said land use planning gets blamed for inhibiting business and slowing down growth and some say it is useless, but she said when it is used appropriately and consistently, it is a key component in communities that flourish. She said when it comes to overlay districts, in Ada County, there are overlays for airport influence areas and flood plains, and planners find the overlays to be beneficial.

**Chairman Siddoway** said many people do have concerns about overlays, in that, for example, Teton County has different overlays than Ada County. He asked in planning Ada County overlay maps, if the reasons and goals of the overlays are well-defined, so a resolution can be reached if there is a conflict; or, does someone just arbitrarily draw a line and say that's the overlay. **Ms. Leatherman** answered, no, every overlay district has a purpose statement and associative statements with it. She said they would not make any changes to ordinances to comply with this bill, and they already have reconsideration in another section of their ordinance, as well.

**Chairman Siddoway** asked if a project were denied in Ada County because it conflicts with something in an overlay, is there specific detail included in the notice as to why the project was rejected, so that the applicant may come in and offer mitigation in order for the project to move forward. **Ms. Leatherman** said yes, they are very detailed in their responses and findings in a denial. She said they try to work in advance to go through codes and standards with an applicant so they don't have a denial, but if there is a denial, they have details that tie back to the standards and purpose.

**Chairman Siddoway** asked if someone came in to the planning and zoning department with a proposed project, would the department have an initial response to say this won't work in this area so don't even try; or, would they be given tentative go-ahead, only to start the process and keep building to where there is so much money in the project that they can't stop, but they can't afford to go ahead either, as has been the concern in Mr. Molton's area. **Ms. Leatherman** said that is why it is important to have clear standards up front and stay consistent throughout the process, so the project developer knows what the rules and process will be.

**Ms. Leatherman** addressed Chairman Siddoway's question about the planning and zoning commission, saying that if someone was doing work in an overlay district, they would know in advance and the standards would be described before a project even got to planning and zoning. She said that is beneficial for builders and developers so they can plan time frames and budgets. She said when people don't know, it gets foggy and that's what causes problems.

**Senator Johnson** asked the sponsor for a definition of "regulatory taking." **Mr. Mason** said it is a phrase introduced into judicial language in the 1920s by a case called *Pennsylvania Coal Co. v Mahon*. He said it was a suit brought by an owner of mineral rights. The state of Pennsylvania had imposed requirements that when anthracite is mined under a surface in Pennsylvania, one needs to periodically leave a pillar of coal to support the surface.

He said the owner of those mineral rights sued Pennsylvania saying the state had taken the value of the coal in that pillar, meaning that the owner's property rights were absolute and should be allowed to let the house or business above sink in if it collapsed. He said the language in that decision noted that a regulation becomes a "taking" when it goes "too far." "Too far" has been the subject of debate for decades since the ruling. **Mr. Mason** said the United States Supreme Court ruled several times that matter becomes a "taking" when it removes all economic value from land, as Mr. Molton described earlier. **Mr. Mason** cited another example of property owners in the Tahoe Basin who were denied development rights for 27 years. He said they thought that would be the case to change the law, but the Supreme Court still upheld it as a balancing of public interest and private interest, saying if there was a reason for the regulation, they would uphold it. **Mr. Mason** said "too far" is specific to each individual case.

**Senator Johnson** asked if it is possible that a standard in one part of the state would differ from standards in another part of the state, meaning is it possible to have a "taking" in one part and not the other. **Mr. Mason** said it is a 'legal' standard, respecting a viable use, and even then there are circumstances when no use is allowed. He said one place is in a flood plain, not in the fringe, but a place where a stream floods with velocity. Someone may own part of that streamside area, but the government can prohibit them from building there because of damage that could happen if the structure gets washed downstream or for putting emergency rescue workers at risk for having to come there. **Mr. Mason** said as far as state or regional differences, the standard will be established by the Idaho Supreme Court, and he doesn't see it having any great differences in different parts of the state.

**Senator McKenzie** said he has been thinking over the appeal provision and it looks like the language says the decision-making body can foreclose someone's rights to judicial appeal simply by taking no action on a request for reconsideration. He asked if the sponsor would comment on the idea of having the language say "a decision shall be deemed final for purposes of judicial review on the date of the written decision regarding reconsideration 'or' the expiration of sixty days, whichever occurs first." He said then it would go on to say, "The twenty-eight day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration 'or' the expiration of sixty days, whichever occurs first." He said that way, if the deciding body just doesn't act on the motion for reconsideration, one doesn't have to wait on their right for judicial appeal. It would start on the expiration of those sixty days when they were supposed to have responded.

**Senator Tippetts** said he thinks that seems to be a reasonable, and frankly positive, change. He said he would be happy to see that change. **Senator McKenzie** said he prefers not to send things to the amending order, but he feels this would be a positive change and in line with the intent of this bill to provide clarity and protection for property owners and affected persons.

**MOTION:** **Senator McKenzie** moved to send **S 1138** to the amending order with the intent to make the change to include additional language of "or the expiration of sixty days, whichever comes first." **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:03 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Thursday, March 07, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Review of Minutes from February 14, 2013	<b>Senator Lacey</b>
<a href="#"><u>H 140</u></a>	Relating to Property Taxation for Property on a Reservation Belonging to a Federally Recognized Indian Tribe	<b>Bill Roden</b> , Hopkins Roden Crockett Hansen & Hoopes
<a href="#"><u>RS22207</u></a>	Unanimous Consent Request to print RS 22207 Relating to Solid Waste Disposal	<b>Senator Werk</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway

Vice Chairman Rice

Sen Hill

Sen McKenzie

Sen Johnson

Sen Vick

Sen Bayer

Sen Werk

Sen Lacey

COMMITTEE SECRETARY

Christy Stansell

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, March 07, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:** Senator Vick

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) to order at 3:10 p.m. (The Senate Transportation Committee ran late, causing this Committee to start late.)

**MINUTES:** **Senator Lacey** moved to approve the minutes of February 14, 2013. **Senator Hill** seconded the motion. Motion carried by **voice vote**.

**H 140** **Chairman Siddoway** invited Bill Roden of Hopkins Roden Corckett Hansen & Hoopes, representing the Coeur d'Alene Tribe, to the podium to introduce **H 140** relating to property taxation for property on a reservation belonging to a federally recognized Indian tribe. **Mr. Roden** deferred to Helo Hancock, Legislative Director for the Coeur d'Alene Tribe. **Mr Hancock** said the legislation would recognize Indian tribal governments within Idaho as governmental partners in providing essential services to citizens of the state of Idaho.

He said **H 140** will treat property owned by Indian tribal governments the same way Idaho treats all other property owned by governments in the state by amending Idaho Code § 63-602A. He said right now that code exempts other government-owned property, whether federal, state, county, city, school districts, highway districts, libraries and so forth. It does 'not' include property owned by an 'individual' Indian on the reservation.

**Mr. Hancock** said there are relatively few laws on the books in Idaho that deal with Indian property. He said the most important one is the Idaho Constitution, article 21, section 19, which he paraphrased, "Idaho forever disclaims all right and title to any land owned by Indians or Indian Tribes." (See Attachment 1.) He said Idaho Code § 63-309 demonstrates another example of the legislature's intent to not tax Indian land. (See Attachment 2.) He said that provision addresses properties exempt from taxation as it relates to personal property.

**Mr. Hancock** said there has been a legal question of the taxability of property owned by a tribe on its reservation. He said there was a federal case in U.S. Supreme Court the 1990s that discussed property owned by an individual in Washington, and whether or not those lands were taxable. He said there is no Supreme Court case that has discussed those types of arguments to interpret Idaho's constitution, so the legal question remains. **Mr. Hancock** said, "But that is not really the question **H 140** is addressing." He said the bill addresses the question "should" they be taxed, and should tribal government property be treated the same as all other government property in the state.

**Mr. Hancock** said he feels the history behind the issue is important. He said the practice of counties taxing tribal property became widespread in 2005 through 2006, with the exception of a few properties. He said the tribe learned later that Kootenai County had implemented a new tax assessment computer program that required the accounting of 'every' parcel of land. He said what is interesting is the policy behind that. He said the tribe and Kootenai County have been discussing whether or not to continue the policy, and whether or not they agree the property is taxable.

**Mr. Hancock** pointed to a news article from February 15, 2013 that he distributed with materials for the Committee members. (See Attachment 3.) He said it describes how the Coeur d'Alene Tribe met with Kootenai County Commissioners to discuss property taxes. He said the Commissioners cancelled three and a half years of taxes, including half of 2009 and all of 2010, 2011 and 2012. He said some of the reasons cited for doing that include: the tribe is a government, just like a county that is required to provide services; the tribe provides services to members as well as nonmembers of the tribe; tribes have deputized police officers, who help the local sheriff's department; and, the tribe has its own courts, medical facilities, education programs, welfare programs, social service programs, roads programs, and farming programs. **Mr. Hancock** noted some of the best farming land is within the reservation, most of which is leased out to non-Indian farmers, and they access that land on roads serviced by the tribe.

**Mr. Hancock** said another example of the services the tribe provides is the Benewah Medical Center, which he said was the first medical center in the country that served the medical needs of both Indians and non-Indians in the community. He said there are about 6,000 patients who frequent that facility, many of whom receive a sliding scale for payments. He said these types of services reduce the cost to the counties and other entities who would otherwise bear the burden. He said this was cited by the Commissioners at their meeting with the tribe that tribal services reduce their county budget.

**Mr. Hancock** next asked the Committee to direct attention to a spreadsheet that shows contributions and payments the Coeur d'Alene Tribe has made to taxing districts. (See Attachment 4.) He said many of these are from agreements the tribe has with the county. He gave examples of ways he says the tribe reduces the burden on county agencies: The tribe is the only municipality in Kootenai county that pays for their inmates at the county jail; the tribe has a contract in which the tribe pays for use of the dispatch service; the tribe has a memorandum of understanding with Burley Fire Department to provide \$10,000 for the next ten years to help with fire protection on the reservation; the tribe gave a donation of \$20,000 to the highway district; the tribe gives significant contributions to the schools under a gaming compact. He said all of this reduces the burden on the county taxing districts.

**Mr. Hancock** said there is an even more important number to address, which is the amount of federal impact aid that local schools get on the reservation. He said the federal impact program is set up to offset the loss of property taxes that school districts wouldn't otherwise receive because of the tribal lands in their school district. He said in their school district on the reservation, the Plummer/Worley School District, gets close to \$1 million a year in federal impact aid dollars. He said the handout packet also includes a letter of support from the Plummer/Worley School District superintendent, who she said supports this bill, and alluded to the amount of money the school gets because of the tribe and federal impact aid. (See Attachment 5.)

**Mr. Hancock** said the tribe and the county discussed **H 140** and while the county can cancel taxes assessed in the past, he said they don't feel like they can stop assessing it, and that is why they need this bill to provide the clarity and uniform law that exempts this property from taxation. He said the bill will not leave counties empty handed. He said in the last four years, the Coeur d'Alene Tribe made more than \$10 million in payments and contributions, which he said is different than county services or other taxes. He said according to the fiscal note, the total statewide impact among the five tribes is just over \$300,000, the bulk of which is in the Coeur d'Alene reservation.

**Mr. Hancock** noted **H 140** was passed unanimously by the House Revenue and Taxation Committee, and there was no opposition given at that time, and it then passed the House with a vote of 64 to 3. He said they did approach the Idaho Association of Counties legislative committee to present the merits of this bill before it was introduced, and he said to his knowledge there was no opposition.

**Senator Hill** asked about the fiscal impact, and if the \$300,000 figure is the gross before or net after the forgiveness of the property tax. **Mr. Hancock** replied that is before any taxes were cancelled. **Senator Hill** asked approximately what percentage of that figure has been forgiven in past years. **Mr. Hancock** replied Kootenai County is close to \$100,000 per year, and about the same amount for Benewah County.

**Senator Lacey** asked if these are lands the tribe is purchasing back. **Mr. Hancock** said the majority of these properties were acquired over the past eight years. He said most were homesteaded when the reservations were open to homesteading in the early 1900s and the tribe has reacquired them through whatever means possible. **Senator Lacey** asked if the tribe is trying to rebuild the reservation. **Mr. Hancock** said the reservations in Idaho are very different in the amount of land that was homesteaded. For example, the Coeur d'Alene reservation is very fertile with sediment for wheat lands, so about 80 percent of the land was homesteaded, or otherwise lost from Indian ownership during that period. As farmers retire and express interest in selling their land, if there is money available, with a willing seller and willing buyer, the tribe would look at purchasing that property. **Mr. Hancock** said lands are definitely important to tribes within their reservation.

#### **TESTIMONY:**

**Chairman Siddoway** invited Douglas Payne, Benewah County Prosecuting Attorney, to the podium. **Mr. Payne** said he has worked in Benewah County since 1994. He said he did 'not' know about this bill, and only found out about it on the news. He said the county commissioners asked him to come down to speak against it. He said the bill is not necessarily a bad idea, but the language is too broad. He said the general idea of making tribal government properties tax exempt is a good idea, and in fact, Benewah County has been doing that by practice. He said there were court cases in 1996 that caused the Idaho State Tax Commission to conclude that land in a reservation was taxable, whether held by an individual or the tribe. It was a time in history when the Coeur d'Alene Tribe was becoming a serious economic power, in that the Indian Gaming Act provided an economic engine to an annual budget of about \$60 million for a reservation with about 1,400 residents.

**Mr. Payne** said Benewah County had a flat income and "a sleeping giant was awakening in half of its domain." He said half of Benewah County lies within the reservation. He said that is why they have a different footing than Kootenai County. Kootenai County has a smaller area in the reservation, but it is rich, in that its tax base would dwarf Benewah County's by 20 to 25 times the income. He said, "Quite frankly, Kootenai County can afford it. It's not really that big of a deal to them." He said Benewah County, on the other hand, is split in half by the reservation boundary, right through the city of St. Maries. He said these are significantly different circumstances.

**Mr. Payne** said the tribe is a growing power and has had some growing pains over the past decade sorting out new relationships between the tribe and the counties. Some are doing better, but this is one that needs some work, because Benewah County is not comfortable with taxing tribal government property either. He said the county itself has granted exemptions to any tribal owned property used for governmental purpose, like the tribal headquarters, tribal hospital and so forth. He said last year, the tribe submitted a pile of applications to the Department of Interior for trespass, which makes properties nontaxable. Those applications were not approved for the tribe on those properties which were governmental in nature.

**Mr. Payne** said this bill is broader than that, as it is 'all' the government properties, 'anything' the tribe uses for government, no matter how it's acquired or how it's used. He said it is problematic because the tribe has become such a power, noting they have a \$60 million per year budget, with \$10 million to purchase land each year. He said that kind of purchasing power is certainly enabling them to rebuild their reservation. He said it creates a problem with how they manage county affairs and tribal affairs because the majority of land and the people in the reservation at this time are still non-tribal persons. **Mr. Payne** said all sorts of services are provided. While the tribe is starting to maintain some of the roads, it is only about five percent of the roads on the reservation in Benewah County that are actually maintained by the tribe. The county has to pay for that. He said it costs three quarters of a million dollars each year to remove the solid waste from the reservation, and it is disposed of at the county's great expense.

**Mr. Payne** said Benewah County has some significant costs, and they're worried about how they're going to pay for them now and in the future, especially considering the economic powerhouse the tribe is becoming. He said Mr. Hancock told the Committee the purpose of the bill is to treat the tribal property the same as property owned by any other government. He said in principle, that is true, but **Mr. Payne** said, tribal governments are unique, and he wants the Committee to understand how unique. He said he looked at Indian Law at the University of Idaho and it made his head spin because it is so different. He said tribal government is not just government, it is business – 'big' business. He said the tribal government employs 1,700 people. There are only 1,400 tribal members on the reservation. **Mr. Payne** said they employ more people than they have people.

**Mr. Payne** said they have casinos, gas stations, grocery stores, manufacturing, agricultural businesses, tribal farming, and others that show it is not just government, it is big business. He said that is why this bill is a problem, because it is so 'broad' that it creates a situation in the free market. He said there are tribal businesses competing with non-tribal businesses, and the non-tribal businesses, through taxes, have to subsidize their competitors – the tribal businesses. He said that is a situation that is going to create increasing problems as the tribe gains more and more property.

**Mr. Payne** said Benewah County is split in half: half on the reservation, half off. He said as the tribe accumulates more and more property ownership, the burden and costs of paying for road maintenance, trash disposal, and fire and emergency services on the reservation will shift to be paid for by people who don't live on the reservation.

**Mr. Payne** said "Yes, tribal government is a government and should be respected as a government. However, we have to be careful because it's not only a government, it's different than other governments." He said citizens in Benewah County pay taxes to be citizens of Benewah County. Citizens of tribal governments get paid dividends to be citizens of the tribal governments. The dividends are per capita, directly tied to how much money the tribe makes.

**Mr. Payne** pointed out the tribe's 2008-2009 budget which is over \$60 million per year. (See Attachment 6.) He also noted the per capita payments in 2008 are higher than they were in 2009 when they were making less money. He said the whole structure of tribal government is different than county government. He said county government taxes people based on the amount of property they have to tax, and as the tribe takes property off the tax rolls, the remaining county taxpayers' taxes will go up. Other governments make payments in lieu of taxes for extraordinary situations, like for Fish and Game, or easements of land.

**Mr. Payne** said this bill is simply too broad. He said it's a good idea and would like to see it passed with moral integrity, which brings him to the point of the constitutionality of it. He said as a prosecutor, he deals with constitutionality every day. He said when police officers arrest bad guys, they are restrained by all kinds of amendments, and no one can push the rules. He said he has to explain to them, "The Constitution not only applies to us, it applies 'especially' to us, and it applies especially to you [the Committee Members] because the Idaho Constitution requires that taxation be fair and equal, and that applies to you specifically, as you are in charge of making sure it's fair and equal." **Mr. Payne** said his job is not to work around the Constitution, it's to work 'by' the rules.

**Mr. Payne** drew the Committee's attention to two more handouts that addresses government's role under the Constitution. (See Attachments 7 & 8.) He read, "Government is instituted for their equal protection and benefit..." and "All taxes shall be uniform upon the same class of subjects within territorial limits...The legislature may allow exceptions from taxation from time to time as shall seem necessary and just." **Mr. Payne** said that is what Benewah County is asking for in its objection to this bill, in that they want a sense of fairness in this bill so it doesn't have greater implications down the road.

**Mr. Payne** said the bill has implications to Benewah County right now with immediate first year costs to the county. He pointed to another handout that shows the 30,200 acres in Benewah County that are taxable at full market value. (See Attachment 9.) He said all the other acres are discounted for some reason or another. He said the tribal government has almost 4,000 of those taxable acres, which amounts to twelve percent of the county's taxable property. He said the tax loss is shown on the next handout, which he said he put together the best he could on short notice, with only 48 hours notice of this meeting. (See Attachment 10.) He said the lost revenue is \$120,000 – of which \$61,000 is to the county itself, while the rest of it is lost to the small entities, most of which provide services to the tribe.

**Mr. Payne** said one of the points the tribe makes is that not all these entities benefit the tribe, but he points out that except for the city of St. Maries and School District 41, all of the services listed on the handout directly benefit the tribe, which amounts to about \$100,000.

**Mr. Payne** said one possible resolution to this is to have the tribe make payment in lieu of taxes. He said the county has asked that a couple of times but they have yet to see the tribe do it, in that the tribe refuses to pay for services actually rendered. He said there are 9,000 residents in Benewah County, and 1,000 of them are tribe members, which is eleven percent of the population.

**Mr. Payne** pointed to an example with the garbage services. He said Benewah County pays over \$700,000 per year to truck it to Montana. He said the county sends a bill of about \$13,000 per year to the tribe for their share of garbage collection. (See Attachment 11.) He said they received only one payment since 2010, which was in the amount of \$14,950, which while appreciated, does not correlate to anything. He said the tribe is currently \$23,660 in arrears, not counting 2013.

**Mr. Payne** said there was a letter from the tribe chairman included with the \$14,950. **Mr. Payne** said he thinks the letter is important because he thinks it corrupts the political process. (See Attachment 12.) He read from the letter, where it says, "I believe it would be appropriate for the Tribe to make a financial contribution to the county to assist with solid waste costs. Therefore, I am enclosing a check for \$14,950 to help the County meet such expenses. I trust this will be of assistance." **Mr. Payne** said it's not that the county doesn't appreciate the funds, but he thinks it shows that if they used per capita, it would be eleven percent of the \$700,000 or about \$70,000 per year. He said the problem is the county never knows what the payments are going to be, so it makes it hard to do business and takes the political leverage out of it.

**Mr. Payne** said the tribe is 'obligated' to pay five percent of the gambling proceeds to state programs, especially education. He said those are not 'contributions' but rather 'obligations' and he said the tribe confuses the two. He said if one opposes the tribe, the tribe will withdraw contributions and put it elsewhere. He said last year, Kootenai County objected to some tribe applications and the Tribe Chairman, Chief J. Allan, pointed out to them that he makes a lot of contributions to the county, and they would stop if Kootenai County opposed the applications. **Mr. Payne** said the Kootenai County Commissioners immediately withdrew their opposition to the applications.

**Mr. Payne** said "it's a very clever business tactic" but it corrupts the political process. He said he is asking the Committee to make sure to separate payment of fees for services rendered from generous contributions which are paid or withheld based upon the political appearance. He said Benewah County just wants the tribe to pay the county what it is entitled to and pay its obligations. He said there should not be a system set up where "that kind of money interferes with the judgment of right and wrong and political power."

**Mr. Payne** said he asks the Committee to pass the bill, but with an amendment to include six words: "property used exclusively for governmental purposes." He said governmental purposes can be broad, as some cities operate a pool or golf course, because they're open to the public. He said when a government acts like a business, that is not government, that is a business, with gas stations, retail stores, grocery stores, farms and manufacturing businesses. He said the tribe did not talk with Benewah County about this bill.

**Mr. Payne** said another way to amend it is to add language that says "shall enter into agreement for payment of respective taxes which approximates that portion of the tax which pays for districts or services actually provided to the tribe or its members." He said the County does provide services to the tribe on the reservation, but the tribe does not pay for those. He said as time goes on, the tribe will provide more services for itself and will require fewer services from the county, but in the meantime, the county needs to be compensated. He said the county will lose \$100,000 revenue, which is a ten percent loss, and in the long-term, it will be more than that.

**Mr. Payne** said, "Someone once said, 'If you want peace, seek fairness.' We need fairness between counties and tribes. If this bill reflects this, we'll get along better. If it reflects the opposite, unfortunately, it will be more strikes against us."

**Vice Chairman Rice** asked if the county gets to tell the federal government how much it will pay in lieu of taxes. **Mr. Payne** answered no. He has seen the checks come in, and they're reliable, but he doesn't know how the amount is agreed upon. He said he thinks the county is open to the idea of figuring out some way of meeting the guidelines to come up with a fair amount for payments in lieu of taxes.

**Chairman Siddoway** invited Phil Lampert, Benewah County Commissioner, to the podium. **Mr. Lampert** said he has lived in Benewah County all of his life and he is opposed to this bill as it is written. He said Mr. Payne addressed many of his concerns with the bill. He said **H 140** affects Benewah County government and citizens in two ways, in that taxes will go up and services will be reduced, plus the tax burden will be shifted to fewer and fewer residents of Benewah County.

**Mr. Lampert** said the long range plans of the tribe is to purchase more property, which will be funded by the Coeur d'Alene Casino. He said the Bonneville Power Administration purchased and donated land to the Coeur d'Alene tribe for wildlife mitigation for Albeni Falls Dam, which is 100 miles north of Benewah County. **Mr. Lampert** said the Bureau of Indian Affairs has a program that has provided funding to purchase land within the reservation boundaries. He added these scenarios will likely be repeated over and over again, and every three thousand acres they buy is one percent more of the county's taxable property that goes into exemption, if this bill passes.

He said most of the governmental functions the tribe performs are covered under funding from the federal government through the Bureau of Indian Affairs. These include law enforcement, land services, forestry, education, EPA (Environmental Protection Agency) activities, and other programs. **Mr. Lampert** said most of these programs are funded to cover the cost plus administrative fees, so the cost of their government is pretty much funded with federal dollars. The tribe is also "big business," as Mr. Payne described, since they have two fuel stations, some stores, etc., through which the tribe generates funds, because the tribe is a taxing entity. They levy 20 cents per gallon on their two tribal service stations, and three stations owned by tribal members. They also sell a lot of cigarettes, which do not have a state sales tax, but there is a tribal tax that generates more funds.

**Mr. Lampert** said another funding source is public works projects within reservation boundaries, which are subject to Tribal Employment Rights Ordinance (TERO) fees. He explained that if he understands correctly, contractors who participate in public works projects on the reservation must pay a three percent fee to the Coeur d'Alene Tribe, which means in the last two years with about \$30 million in projects, the tribe has collected fees of about \$900,000. He said in future years, when a new bridge, new roads and highway 95 improvements are in progress, the Idaho Transportation Department will have to pay this three percent TERO fee to the tribe.

**Mr. Lampert** described the situation with the Plummer/Worley School District 44, which covers the lower part of Kootenai County and the western part of Benewah County. He said in the school district, about 10,000 acres have been purchased by the tribe and would fall into the category of not being taxable. The school itself receives local funding through property tax and about \$1 million in impact aid from the federal government, as well as voluntary donations of \$110,000 to \$120,000 per year from the Coeur d'Alene tribe. He noted the upcoming sequester may cause them to lose about \$53,000, and a Title 1 program might get lost, so they're looking at losing up to \$80,000 before the end of the fiscal year.

**Mr. Lampert** said with the local property tax, state funding, federal funding and voluntary donations, since 2009, their funding has dropped 29.5 percent, from \$4.3 million to \$3.1 million, to about \$2.92 million estimated next year. He said they will probably need to apply for an override levy and ask for \$1 million plus. He said if this bill passes and these lands come off the tax rolls, that means fewer people will be paying for higher dollars worth of services. **Mr. Lampert** shared his grandchildren's school was the first to participate in the state program to receive a loan to build a new school after their school was declared unsafe. The loan has to be paid back to the state over 20 years. It was a wonderful program because the portables without running water were replaced with a beautiful \$11 million state of the art school.

He said, if the Coeur d'Alene tribe continues to purchase more land, and take it off the tax rolls, fewer and fewer property owners will be paying a bigger portion of the bill to the state for the new school, which has over 50 percent tribe members.

**Mr. Lampert** said he does not think the tribal purchases planned for the future are necessarily for government operations. He said he likes the idea of separating out property for government purposes and non-government purposes. He said the tribe does have adequate funding and there will not be much of an impact on them. He said the state legislature has the responsibility to "do no harm to local jurisdictions," but if this bill passes in this form, there 'will' be harm to Benewah County, because it already struggles to make obligations of county services. **Mr. Lampert** said he suggests using Mr. Payne's recommendations for amendment, or have the state of Idaho step up and make up the money the county loses.

**Vice Chairman Rice** asked if the tribe is the only government entity that Benewah County taxes. **Mr. Lampert** said it probably is, and "as you know, if you tax the county, you're just taxing yourself." He said school districts are exempt, but as Mr. Payne says, it is a unique government.

**Vice Chairman Rice** said something was made of the tribe being slow to pay a bill. He asked Mr. Lampert if just last month he finally agreed to pay a judgement he personally owed the tribe from a 2010 contract. **Mr. Lampert** answered yes, he did, but that has absolutely nothing to do with what this bill is talking about.

**Vice Chairman Rice** asked in that contract, didn't he recognized the tribe as a sovereign nation within the United States. **Mr. Lampert** said he is not sure where he is going with that question.

**Chairman Siddoway** invited Mr. Roden to the podium to complete the presentation.

**Mr. Roden** said in the interest of time, he would make just a few comments. He said some of the expenditures by the Coeur d'Alene Tribe are by virtue of compacts with the state of Idaho, as with the casino, and the tribe will certainly continue with those. He said there is no threat that those payments will go away. He said a few years ago he negotiated the compact between the tribe and the state for the fuel tax, which the tribe does collect. Those funds are distributed for the same purpose as the state of Idaho uses fuel tax proceeds, which is for roads.

**Mr. Roden** said the Coeur d'Alene Tribe is the largest employer in north Idaho and finally has been able to find an economic manner to provide for the welfare of its citizens. He said they are also interested in providing benefits for 'all' the citizens in the area, because they are a very sharing people and have always been. **Mr. Roden** said he is glad Mr. Payne agrees with the concept of the bill. He said, "We don't dictate to any other government exactly how they spend their money."

**Mr. Roden** said if the tribe leases land to farmers, the revenues are used for government purposes. He said that is not much different than the state of Idaho leasing a building it owns on 9th and Bannock in Boise to a brewery, so that it can collect rent. Governments do collect these monies like this. He said that is why this bill is limited to government property for governmental purposes.

**Mr. Roden** said the Coeur d'Alene people are interested in the welfare of their children in the Plummer/Worley School District, and the people of Benewah County get the benefit of the tribe's public health services that are open to everyone in that area.

He said a major expenditure is the transportation services provided throughout Benewah County and Kootenai County for people to get to and from work. He said that is all in addition to federal funds that are made available for that purpose.

**Mr. Roden** said **H 140** is about the basic principle of not taxing government entities, and he said he respectfully asks for the Committee's favorable consideration.



**Senator Hill** asked if county officials in Benewah County and other counties affected by this legislation were contacted and asked for opinions before the writing of this bill. **Mr. Roden** replied that prior to presenting this legislation, they consulted at length with the Association of Idaho Counties and participated in their legislative group dealing with this issue. He said in addition, Kootenai County was consulted, and he was surprised that Mr. Payne did not know about this, as it is a simple bill to read. **Mr. Roden** said he'd like to point out that in the taxes that are allegedly being paid to Benewah County are trust properties. (See Attachment 13.) He showed an example of a tax bill to Benewah County, which **Mr. Roden** said he assumes are for properties that Benewah County claims will be lost. He said he has many other bills like this that are taxed to the United States government held in trust to the tribe. He said these are tax assessments that have been claimed in the past.

**Mr. Roden** said all he is saying is that this has been a continuing dialogue and he thinks it should come to a close. He said he won't argue the constitutionality of it. It is just the concept of government relationships.

**Senator Hill** said he understands these legislative bills are available and anyone can access them, but based on what he's hearing, Mr. Roden has no idea why Benewah County would not have known about this ahead of time, because he had made some efforts through the Association of Idaho Counties to make sure everyone was aware of it. **Mr. Roden** replied he would inquire about this issue almost daily when he would see Dan Chadwick in the hallway. He said they broadcasted it through the Association of Idaho Counties to advise them of the presence of the bill. **Mr. Roden** said Mr. Chadwick advised him they had almost no pushback throughout the state.

**Senator McKenzie** asked if these properties are taken off the tax rolls and the county is providing the services of police, fire, waste disposal, and other things, is it the expectation that the county will bill directly to the tribe or will that cost be absorbed by the remaining tax base. **Mr. Roden** said the tribe has no intent, regardless of this bill, to cease participating in the governmental units within Benewah and Kootenai Counties. He said they will continue to make contributions and will have those contracts. He said they'll make the same contributions to the school districts. The decisions will continue to be made on an annual basis. He said they do pay for solid waste disposal, and that is a legitimate cost that will continue.

**Mr. Roden** said it is the concept that the dollars are really not that important. It is the concept of a government taxing a government. He said, "If problems develop, what the legislature gives, it can also take away."

**MOTION:** **Senator Werk** moved to send **H 140** to the floor with a **do pass** recommendation. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**. Vice Chairman Rice will carry the bill on the floor.

**RS 22207** **Senator Werk** brought to the Committee **RS 22207** relating to solid waste disposal.

**UNANIMOUS CONSENT:** **Vice Chairman Rice** asked, seconded by **Senator Lacey**, for unanimous consent to send **RS 22207** to State Affairs Committee for printing. There were no objections.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:17 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Wednesday, March 13, 2013**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1047</a>	Relating to Garnishment for Payment of State Income Taxes	<b>Senator Rice</b>
<a href="#">H 244</a>	Relating to Fire Protection Districts and Levy Procedures	<b>Representative Mike Moyle</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Wednesday, March 13, 2013  
**TIME:** 3:00 P.M.  
**PLACE:** Room WW53  
**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:05 p.m.

**S 1047** **Chairman Siddoway** invited Vice Chairman Rice to introduce **S 1047**, relating to garnishment for payment of state income taxes. **Vice Chairman Rice** said he visited with Chairman Siddoway and Senators Hill and Pearce along with Commissioners from the Idaho State Tax Commission (Commission) and worked out some changes to the garnishment bill previously introduced in this Committee. He said instead of putting the change in title 11, it will be put in the tax code in title 63. He said the intention is to send this bill to the amending order for a "radiator cap."

**Vice Chairman Rice** said it gives the Tax Commission the authority to do writs of continuing garnishment when they do garnishment of wages. Those will be limited to 25 percent of the gross taxable earnings, except it would be limited to ten percent if the federal government is also garnishing that person's earnings. He said that makes it easy for employers to calculate what should be sent to the Commission. It also lengthens the time to collect on a tax assessment from six years to twelve years.

**Vice Chairman Rice** said the basic problem is the Tax Commission has been levying 100 percent of a person's wages, which means the employee loses their whole paycheck. He said when the Commission has wanted to "hit a person twice, they get one paycheck, then go back and do a new levy and hit another paycheck" which is a lot of extra work. He said the result is people quit their jobs, because they don't have any money to take home to feed their family or buy diapers. He said they go find another job, go work under the table, or go out of state to avoid the garnishment.

**Vice Chairman Rice** said he spoke with attorneys who handle garnishment collections, and he said their experience is 90 percent of the time, the garnishment happens. The other ten percent of the time, the employees will contact them wanting to work out a payment schedule, because they are afraid they might lose their job if it is done by garnishment. He said in a few cases, people will leave employment for one reason or another, and it may or may not be because of the garnishment. He said he spoke with them because the Tax Commission does not have experience with anything other than collecting 100 percent of the wages.

**Vice Chairman Rice** said the Commission was having a hard time coming up with an accurate number for a fiscal impact. He said based on the analysis, it would appear they are likely to have increased collections, but he's not sure, as there might also be a slight decrease, but he said he believes it is more likely to be an increase.

**Senator Hill** thanked Senator Rice and the others who worked on this bill, saying he appreciates the amendment and thinks it makes it a better bill with which he is more comfortable, and he will be supporting it.

**Senator Johnson** said in the original bill, the language was 25 percent of 'gross wages' and it also mentioned a percentage of 'disposable income.' He asked if this amendment does not refer to 'disposable income' at all. **Vice Chairman Rice** said it does not refer to that, but rather "gross taxable wages," which is the language specifically suggested by the Tax Commissioners.

**MOTION:**

**Senator Hill** moved to send **S 1047** to the amending order. **Senator Werk** seconded the motion. In discussion, **Senator Vick** asked about the difference between an "S corporation" and an "S-corporation". **Vice Chairman Rice** said there is no substantive change, as it only removes a dash, which cannot be seen because of the line through it striking the words. Motion carried by **voice vote**.

**H 244**

**Chairman Siddoway** said Representative Moyle was going to introduce **H 244**, but he had another commitment, so he deferred to Gary Rohwer, Director of Idaho State Fire Commissioners Association (Association, ISFCA), to present instead.

**Mr. Rohwer** said **H 244** addresses an issue in the fire code that has existed since a rewrite was done in 2006. He said it relates to levy rates in districts that decide to consolidate. He said the way language is now, when commissioners of two districts decide to merge, the levy rate used for the new district would be from the district with the higher rate and it's done without any voter input. He said the only mechanism that existed to put this in front of the voters was convoluted in that the public could protest the consolidation and an election might eventually be held.

**Mr. Rohwer** gave an example of what happened in the Caldwell Rural and Notus Fire Protection Districts. He said when they merged, Notus citizens said they felt they weren't adequately served. He said they understood the importance of merging with Caldwell Rural to improve their services, but they didn't understand the tax implications. **Mr. Rohwer** said the proposal now would provide that if the difference in the new levy would be more than three percent, the voters could make the determination. The purpose is for the citizens in the district with the lower levy, which would be increased with the merger, would receive representation in the process. He said the bill also places wording to cause commissioners of all the districts involved to have public meetings and work to establish the levy rate between the high and low marks to adequately support and fund the new district. He said they feel it won't inhibit justified consolidations, but it would get voter input, which was their primary concern.

**Senator Werk** said one concern he has is if the districts meet in a combined meeting and determine that they need a higher levy rate in order for consolidation to take place, and an election is held, would it be one or two questions on the ballot; one to consolidate and another to raise the levy. **Mr. Rohwer** said an election is needed only if the levy rate exceeds a three percent increase and his understanding is it will only be one question. **Senator Werk** said his concern is consolidation may be beneficial in the long run, but in the short run could mean a higher levy and having an election could result in short term consequences of not consolidating. He said he thinks there may be unintended consequences with this bill.

**Senator Hill** asked Mr. Rohwer if he is aware of any opposition to this bill. **Mr. Rohwer** said he has had no input from the Association's districts around the state. He said the districts he is most familiar with are members of "ISFCA," whose members are 65-70 percent of the districts in the state.

**Vice Chairman Rice** said he wanted to point out that consolidation of districts by an election is already in Idaho Code § 31-1414. He said what this bill does is provide that if there is a big difference in levy rates, the districts will submit to an election, and it gives more information to the public voting on consolidation.

**MOTION:** **Vice Chairman Rice** moved to send **H 244** to the floor with a **do pass** recommendation. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:22 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

AGENDA  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Tuesday, March 19, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES:	Review of Minutes of February 26, 2013	<b>Senator Vick</b>
	Review of Minutes of March 5, 2013	<b>Senator Werk</b>
<a href="#"><u>H 138</u></a>	Relating to Plats and Vacations and Acceptable Methods of Copying a Plat	<b>Representative Luke Malek</b>
<a href="#"><u>H 242</u></a>	Relating to Property Taxation and Business Inventory Exempt from Taxation	<b>Representative Stephen Hartgen</b>
<a href="#"><u>H 243</u></a>	Relating to Sales Taxation and Application Software Accessed over the Internet	<b>Representative Mike Moyle</b>
<a href="#"><u>S 1159</u></a>	Relating to Solid Waste Disposal and Compliance with Notice and Meeting Provisions in Certain Circumstances	<b>Senator Elliot Werk</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

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MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Tuesday, March 19, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

**MINUTES:** **Senator Vick** moved to approve the minutes from February 26, 2013. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**H 138** **Chairman Siddoway** welcomed Representative Luke Malek to the podium to present **H 138**, relating to plats and vacations and acceptable methods of copying a plat. **Representative Malek** said this is a simple bill. He said it is about silver emulsion, which is common in film photography imaging. He said when a plat is recorded with the county, a copy is required as well. By current statute, that copy has to be made using silver emulsion, but silver emulsion has actually become quite rare. He said there are now other means for reaching the goals that processing procedure was meant to reach, which is longevity of an indelible image that would last throughout time. The provision in **H 138** would allow for other means to be used to create an original plat filing copy at the time of recording with the counties. **Representative Malek** said this issue was brought to his attention by officials in Bonner County who had to do 300 plats but couldn't find any silver emulsion. He said he ran this by county clerks throughout the state, and they all seemed to be fine with the language.

**Senator McKenzie** asked what kind of materials are used for a plat to be "coated with a suitable substance to assure permanent legibility" and how much it would cost. **Representative Malek** replied he can't name them specifically, but there are several different options that can be used that were discussed as the legislation was drafted.

**MOTION:** **Senator Werk** moved to send **H 138** to the floor with a **do pass** recommendation. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**H 242** **Chairman Siddoway** invited Representative Stephen Hartgen to the podium to present **H 242**, relating to property taxation and business inventory exempt from taxation. **Representative Hartgen** said he would give a brief overview and then defer his time to Brad Wills with Build Idaho. He asked the Committee to refer to the schematic that he said describes the purpose of the legislation. He said there are four stages that property goes through. First, it is agricultural or forested use, which is considered 'nonuse.' Next it is platted and the value is assigned and the typical taxes are quite low.

In Stage 3, a developer would 'improve' the property, often placing infrastructure such as streets, roads, water, sewer, electrical, and such, the costs of which are borne by the developer. Then the land is sold off a bit at a time in the form of housing lots or commercial development, at which time it reaches its full value.

**Representative Hartgen** said **H 242** is a modification and clarification of H 519 that passed last year. It seeks to extend an exemption, not 'eliminate' an exemption, on the Stage 3 land that some counties were treating as fully developed, when really the land is vacant except for improvements. He said **H 242** makes three changes to statute: 1) Clarification as to how the land is titled and that a transfer of title within the same ownership group would 'not' constitute a transfer for purposes of a sale, and thereby is 'not' taxed at a higher rate; 2) Assessment of the value of the property, which will be described further by Mr. Wills; and 3) Application process and how to handle appeals if they should arise. **Representative Hartgen** deferred to Mr. Wills.

**Brad Wills** said he is with Build Idaho, which is an organization of land developers in Idaho, and he also represents the Idaho Building Contractors Association. He said the bill that passed last year had temporary rules on it, but there was not enough statutory clarification so there were implementation problems. **Mr. Wills** said the Idaho State Tax Commission decided to not present a permanent rule for this exemption and recommended that this exemption be clarified through the legislative process.

**Mr. Wills** said even though a few counties, like Ada and Bonneville, did a good job implementing the legislation from last year, there are four problem areas that need clarification: ownership issues, valuation methods, application process and the appeal procedure. He said there was confusion regarding conveyance. He said the problem with valuation is that different methods were used: using only a percentage; or, valuating the land by first giving value to the bare ground without the site improvements and then giving value 'with' the site improvements, and the difference was the value of the exemption. He said the latter is what was intended with last year's legislation.

**Mr. Wills** said there is new language to help with the application process. He said it would be redundant to have to reapply each year, because there were two triggers that would cause ineligibility for the exemption, as when a structure is started on the property or it is actually sold to a third party. The last problem led to specifying the appeal process. He said in Kootenai County last year, there were exemptions approved, but there was no opportunity to appeal the value they were given. He said the appeals process mirrors existing law. **Mr. Wills** said this bill provides enough clarification for counties to be able to appropriately implement the law this year.

**Chairman Siddoway** asked Mr. Wills to address how they decided on the percentage of valuation for the exemption becoming 75 percent and if the counties were involved in that decision. **Mr. Wills** replied they had many discussions last year about the temporary rules on how to reach value and they could not provide the clarification. He said several counties, including Canyon and Kootenai, decided to use a percentage basis and not look at the raw land. Other counties, like Ada and Bonneville, did look at the raw land value and came up with different valuations. **Mr. Wills** said the counties were not part of the 75 percent valuation determination.

He said in conversation with Canyon County Assessor Gene Keuhn and Ada County Assessor Bob McQuade, they discussed coming up with a percentage, but he said that does not treat everyone equally, because some counties do not increase the value for the exemption, so they would have to give a percentage based on something they hadn't already given. **Mr. Wills** said the idea came up to use comparative market value, which is what developers and home-builders asked the counties for, but the counties don't agree with limiting it to that.



**Mr. Wills** said he added the idea that if they 'can't' because they don't have the "comps" (comparative market value) then they could use a percentage. He said Canyon County used 35 percent; Kootenai County used 75 percent; Ada County averaged 75 percent; Bonneville County averaged 87 percent; and, Twin Falls averaged 90 percent. He said the percentage is a default he would rather 'not' use, because he said the intent of the language last year was if land was fully developed or only raw land. He said he thinks that is truly the only way to come up with a fair value for the exemption. He said the counties did not come up with that 75 percent number; he said 'he' came up with it by extrapolating the percentages counties around the state were using. He said half of all the exemptions last year were 75 percent or more.

**Chairman Siddoway** asked about the transfer of ownership. He said it seemed that last year one of the big selling points of the bill was when the land, regardless of what "stage" it was in, was transferred to another entity, it would lose the exemption. He said now it appears that has gone by the wayside. **Mr. Wills** said Chairman Siddoway is correct about last year. He said the language says "title to the land is conveyed from the land developer." **Mr. Wills** explained the developer is the company that develops the land, invests the money and is able to carry it as business inventory. He gave an example: if a bank needed a developer to change ownership of property to one of their LLCs that was better funded, the developer can move that land from one entity to another without affecting the treatment of the inventory. He said if the developer went under and the bank took over the property, the exemption does not follow the land. He said that is still the case, so they needed to define how to allow the developer, in the course of his business, to move ownership from one entity to another. It is more of a distribution rather than a taxable transaction. No money is actually exchanged and there is no "sale." **Mr. Wills** said he and Alan Dornfest of the Idaho State Tax Commission came up with the language last December to define if a property is sold to a third party. The exemption does not stay with the property if the developer sells it in any way from himself: the exemption is lost.

**Chairman Siddoway** asked about a situation he said could raise concerns about "double dipping." He said he received a letter from a proponent of **H 242** that described how a company could get tax benefits for making a change of ownership when they were the principle entity of both companies. For example, changing from Mudd Lake Builders, Inc. to Mudd Lake LLC. He said they would do that so they could get a tax break. He asked **Mr. Wills** to explain.

**Mr. Wills** answered the tax benefit would not be a property tax benefit. He said a good example would be for estate planning for an older gentleman who moved property from personal account to an LLC that he owns. He said to do that, the man must convey and title it from one entity to the other, and he therefore would lose the exemption for that portion of the year. He is still the land developer and still holds the inventory on that land. **Mr. Wills** explained where the 50 percent comes in is in the IRS related party threshold, that anything more than that is a different entity, and as long as it is kept under 50 percent, that prevents the abuse of the exemption going to someone who does not deserve it.

**Senator Lacey** said he was involved in this discussion and supported it last year. He said he has been a developer and is familiar with the costs involved, and part of the reason for the bill was the down economy. He said he's familiar with how much money is put in the ground that can't be seen until it is sold. He said this bill is for a developer who transfers property to an LLC that the developer owns.

**Senator Lacey** said he doesn't see in the bill where it precludes selling it to someone who paid the developer a higher value. He said when a developer puts thousands of dollars into the ground and sells it to another developer, the seller would charge for the work that was done, and that means to Senator Lacey that the value has gone up. He asked Mr. Wills if that seems correct to him.

**Mr. Wills** said yes, that is a third party sale which means it is an unrelated party, one who is not related to the original person. That would be a conveyance of title that would preclude the exemption.

**Senator Werk** asked about the time requirements for appeals. He asked if the requirement dates are the same as would apply to other taxpayers if going to the board of equalization. **Mr. Wills** answered that it mirrors the language of any exemption appeal process, so the dates are in statute, which are April 15, May 15 and the fourth Monday in June. He said where it varies is they could appeal both the decision 'and' the valuation.

**TESTIMONY:**

**Chairman Siddoway** invited Brent Adamson, Boise County Assessor and Vice Chair of the Idaho Association of Counties (IAC) Legislative Committee, to the podium. He said he is here to oppose **H 242** and provided a letter in opposition. (See Attachment 2.) He said he met with Mr. Wills and others to discuss corrections to last year's bill, but they realized they couldn't fix it in rule, and they came to an impasse. **Mr. Adamson** said they don't have a problem with the conveyance, as the new language means an original land developer may get to keep the exemption longer than they did with H 519. **Mr. Adamson** said they also didn't like the wording for the appeal process in the original draft, but that has been fixed and they do not have a problem with the appeal process in **H 242**.

**Mr. Adamson** said the biggest concern is the 75 percent exemption, and they do not support the bill because of it. He said IAC did a survey among their counties after last year's assessment roll, asking how many applications were there, what was the average takeoff for site improvements, how did it go and what was the discussion. He said there was a minimum of four percent removed from current market value of the platted land to a maximum of 90 percent. He said the average was between 35 and 42 percent. He said Canyon County used the same process that Boise County used. They could not find a completely undeveloped platted lot that was sold to be able to apply market value, so instead, they went to the developer applicants and asked them how much they spent to help them determine the site exemption. He said every applicant, even those who did not qualify, provided him with all their data.

**Mr. Adamson** said they took that data and figured out what site improvements cost the developers at the time the subdivision was platted. He said they calculated what that number was as a percentage to the value. He said they took the percentage, not the dollars but the percentage, and moved it forward to today's value. He said just moving a hard value does not address the issue that market values go up and down. He said obviously, markets have been going down, which necessitated the builders to come forward with this exemption. **Mr. Adamson** said the 75 percent exemption is rather high. He said, as Mr. Wills shared, that percentage may have fit half of the counties. He said his guess was that it may actually be 75 percent of the total 'parcels' and not total counties, but he would discuss that with Mr. Wills later.

**Mr. Adamson** said he believes the 75 percent exemption should be given a sunset clause, or at least bring that figure down to take into consideration highs and lows in the market. He said either way, they want that number fixed, but the rest of the bill is fine.

**Senator Rice** asked how many different ways the assessments are being done. **Mr. Adamson** answered that each county does set values differently, because it is difficult to find an equal-looking lot with equal amenities in Ada County that sells the same in Boise County, which is a difference between urban and rural, as well. He said when he did estimates, he arrived at about 33 percent as a calculation for takeoff of value. He said he moved that forward to current value and took that off, and that resulted in zero appeals granted. He said percentage-wise, Boise County took the largest hit in the percentage of the value of the loss. **Mr. Adamson** said the pictures provided of the four stages of value represents what 'that county' does, and there is not another county that does it that way.

**Senator Johnson** gave an example for Mr. Adamson to consider. He said, "If I have a development and on it there are two lots that are the same size, but one overlooks the river and the other is on the other side of the street. Is it safe to presume they'd have different market values, and if so, what would be the effect of the 75 percent value on those two lots." **Mr. Adamson** said, yes, it is safe to say that, which is another reason they don't like the 75 percent value, because it is not related to the market. He said 75 percent off an \$80,000 lot is much different than 75 percent off a \$30,000 lot. **Senator Johnson** asked if it is fairly reasonable to assume the cost to develop those lots is approximately equal. **Mr. Adamson** said in consideration of improvements such as underground utilities, telephone poles and sidewalks, it would probably be identical.

**Senator Werk** said it seemed the procedure for assigning a value without "comps" available could be promulgated by the Idaho State Tax Commission, if they were given the authority to do that. **Mr. Adamson** said he is not sure if the Tax Commission could do that. He said Idaho is a state driven by market values, so market value is an easy way to determine value. However, the comparative market values, "comps," are not always easy to get. He said absent market value, they have to do something else, and one thing they can do is look at cost. He said that can be done a lot more with commercial buildings than with residential. He said if developers want an exemption, they need to come to the assessor and tell them. The assessor will ask them for the cost, and the developers would provide that information.

**Vice Chairman Rice** said he is struggling with the concept of just adding the cost of the improvements. He said developers buy land, develop the lots, put in the improvements, and sell the lots. He said it doesn't make sense for developers to sell the property only for the cost of the improvements, so there would not be lots that were being sold as just 'improved.' **Vice Chairman Rice** asked how that would be a fair assessment of the difference in value. **Mr. Adamson** said market value is just that: someone putting something up for sale and someone being willing to buy it. He said the problem is when there is only one or just a few lots in a subdivision, that doesn't dictate market value of the property. It is only "a sale."

**Mr. Adamson** said they had many discussions with Mr. Wills about the intent of H 519, and they struggled writing a rule that met the statute. He said they couldn't make something up, so they had to go with what the law said, and that is how they arrived at the practice of cost.

**Chairman Siddoway** invited Steve Cope, President of SKC, to the podium. **Mr. Cope** said he has a project that was under water last year and still is this year. He said he spent many hours with Canyon County assessors having the same discussion as the one being heard today. He said there needs to be clarification of the statute, and he believes it should be based on market value. He said there were not a lot of good comparisons, but he did come up with some and put the market value of ten percent of the assessed value. He said his effort didn't carry any weight.

**Mr. Cope** said he disclosed his numbers to Canyon County, and the county only used 35 percent exemption. He said his number substantiated that his land was 17 percent of value, so that should have substantiated an 83 percent exemption. He said when he left last year, he was thinking and still believes that 90 percent was what was presented in testimony last year, and he said he believes that to be a fair number, as it represents across the board, and it would still give the opportunity to have market value if there is a comparable sale. **Mr. Cope** said this legislation provides for 75 percent exemption if there is not a comparable sale. He said for the future, this is an excellent bill because it will give people like himself the ability to go forward with less risk with the product that is available for sale. He said he still thinks the exemption should be higher, but he can live with 75 percent and he's glad there is at least something in writing to protect the original intent of the bill.

**Chairman Siddoway** invited Jeremy Pisca, representing Idaho Building Contractors Association and the Idaho Association of Realtors, to the podium. **Mr. Pisca** said he thinks the discussion has gone off track a bit, since the bill doesn't have to do with "market value." He said it has to do with the amount of "exemptions." He said his personal involvement with the legislation was during negotiated rule-making with the Tax Commission after the passage of H 519. He said what was apparent to him was there were some assessors who did not want to move the ball and solve the issues. He said at one point they threw their hands in the air and said if they can't negotiate, then they will have to go back to the legislature and clarify the intent. He said he is baffled because the goal has not changed, which was to get a comparative market analysis. He said when his house gets assessed, assessors go and look at other properties of like kind to come up with a valuation. **Mr. Pisca** said if there is a 20 acre parcel with site improvements, compare that against a 20 acre parcel without site improvements, and the difference in the that valuation is the amount of the exemption. He said he thought that seemed pretty simple, and he doesn't understand why some find that so difficult.

**Mr. Pisca** said what they experienced was varying levels of difficulty in some counties, although not all counties. He said some counties very much met the spirit of the intent of the original legislation. He said his clients told him other counties were intentionally throwing up hurdles to make it more difficult to comply. He said they were told to open up their books, tell what they paid for asphalt, gravel, concrete, and all those things, none of which has any bearing on the amount of the exemption. He said different developers pay different costs, because some are more savvy than others, or maybe because one developer also owns a gravel pit and gets his gravel cheaper.

**Mr. Pisca** said the only problem with this bill from the assessors' standpoint is that 75 percent exemption. However, he said, the legislation says 'first' to find a comparative market analysis and compare the property against similar properties. If other properties cannot be found, as may happen in some smaller counties that may not have the amount of volume for that comparison, 'only then' does the exemption go to the 75 percent rule. He said that is simply a fall back.

Mr. Wills was invited back to the podium for a summary. **Mr. Wills** said he would stand for questions. **Senator Johnson** asked him about the transfer portion of the bill. He asked if an exemption goes from an LLC to a corporation, who retains the rights to the property, and when the property is sold in the future, who sells it, the land developer or the corporation. **Mr. Wills** answered only the landowner is eligible for an exemption; it follows the physical owner of the property. The landowner and the company are the same person, so when it is sold, the last owner on the title is the one selling it. **Senator Johnson** asked when the land is sold, whose name is on it, the corporation or the LLC.

**Mr. Wills** said when the land is sold, the last owner with the title is from whom the title will be conveyed to the third party. **Senator Johnson** asked if a property is sold from party A to party B, who is party A. **Mr. Wills** answered a developer does not 'sell' a property from himself to himself; it could be an internal transfer or a "distribution," but not a "sale." A "sale" is only to a third party, someone unrelated to oneself. **Senator Johnson** asked if a property is transferred to oneself to a different name, as in from ABC LLC to ABC Inc., and ABC Inc. is the entity with the title and then sells it to a third party, is it ABC Inc. that sells it or ABC LLC. **Mr. Wills** answered that ABC LLC and ABC Inc. are the same people, but the title would go from ABC Inc. to the new third party owner.

**Senator Werk** asked about the conveyance or transfer of a property from an original entity or developer. He said statute requires that the owner retain at least 50 percent of that ownership stake. If the developer picked up a property and did some extensive improvements, and Mr. Jones joins the company at 49.9 percent ownership stake and gave Mr. Smith a bundle of money, the value of the property and the exemption remains the same, even though Mr. Smith has seen a large realization of profit in that transfer. **Senator Werk** asked if he is understanding that correctly. **Mr. Wills** answered that a better example is a husband and wife who own something together and then get divorced. The husband is the original owner so the property goes with him. He said in Senator Werk's example, if a company owns an asset, and whether he sells 25 or 30 percent of it, it is unrelated to the exemption. As long as the ownership doesn't change more than 50 percent from the original owner, the property retains that exemption. As soon as that trigger is pulled, then the owner loses the exemption.

**Mr. Wills** explained further. He said if a business owner sells 50 percent of the company to Senator Johnson and the other 50 percent to Senator Lacey, they now own the company, but no title of property has changed hands, only the company changed hands. **Mr. Wills** said they closed that loophole by including the language "original developers" who put in improvements.

**MOTION:**

**Vice Chairman Rice** moved to send **H 242** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. Motion carried by **voice vote**. Vice Chairman Rice will carry the bill on the floor.

**H 243**

**Chairman Siddoway** said Representative Mike Moyle was unable to attend today, so he invited Jay Larson, CEO and President of Idaho Technology Council (Council), to the podium, to present **H 243**, relating to sales taxation and application software accessed over the internet. **Mr. Larson** said the Council is an industry organization focused growing innovation and knowledge in a knowledge-based economy in Idaho. He said they represent about 40,000 jobs in Idaho companies.

**Mr. Larson** said the discussion today is about "cloud services." He said Rick Smith, who has years of tax law experience with Hawley Troxell, will speak more about that and Jeff Sayer, Director of the Department of Commerce, will share more about the importance about this industry and this legislation. **Mr. Larson** defined cloud services as when a customer pays a subscription for a service to a provider that has a server the customer can access for computing services, storage services, processing services and analytical services. The method by which they access it is over the internet or wireless service. **Mr. Larson** said the legislation has been carefully crafted as a "definition" and not an "exemption," as recommended by dozens of industry companies and through extensive dialogue with the Idaho State Tax Commission (Commission).

**Mr. Larson** said last fall, the Commission made a ruling on cloud services to say they should be considered a tangible good and as such should be subject to sales tax. He said that ruling was "news to our members" who have not been paying taxes on cloud services because, like other services, such as legal and accounting, those services are not taxed. **Mr. Larson** said this legislation clarifies that cloud services 'are' a service and 'not' taxable. He said one of the top initiatives for the Technology Council is to grow a stronger software community, which is one of the fastest growing industries. He said they also want to make sure there is fair, consistent tax policy applied across the cloud services arena.

**Mr. Larson** said software is very important because cloud computing is something that will continue to be used in the future. He said several companies will testify today that they use this medium to convey its products and services to its customer base. He asked the Committee to support the **H 243**, the cloud services clarification legislation.

**Senator Hill** asked for Mr. Larson's help going through the language of the bill. He said there are technical terms like "electronic download" and "storage media" and he wants to be sure he understands those terms. **Mr. Larson** said he would defer to Rick Smith with Hawley-Troxell representing the Idaho Technology Council who would be the resident expert on that. **Mr. Smith** said he has worked with the Council and negotiated with the Tax Commission to draft this bill.

**Mr. Smith** offered some background. He said the Sales Tax Act was enacted in 1965. It was enacted primarily to tax 'tangible' personal property, either the sale or use of that tangible personal property in Idaho. It was 'not' primarily directed to tax services nor to tax transactions in other states. He said the issue of services and other states is directly presented by this legislation. He said the original version of the sales tax act made no reference to computer software, as it was 1965. He said it was 1983 when the computer software definition came into statute as part of the definition of tangible personal property. He said it was "legal fiction" in his mind because software was "out there in 1's and 0's" arranged in a way to allow computers to operate. He said it is 'not' really tangible personal property, but that is what was decided back then. **Mr. Smith** said the legislature still decided to tax "canned software" and chose not to tax other types of software, like "custom" software. He said "right from the get-go, the legislature divided software for purposes of taxation, into two types: taxable and nontaxable – canned and custom."

**Mr. Smith** said there was a question about whether this change should be part of a definition or an exemption. He said it is their position that it should be part of the definition, because that is how it has always been, outlining what type of software is taxable or not. He said fast-forward to the 2010 decade, with cloud software that no one even ever thought of in 1965 or in 1983. It is software that is remotely accessed, often in a different state. The user has no control over the formulation, building or operation of the software itself. It is just a matter of the user putting "input" into the software and getting "output" from it.

**Mr. Smith** said there has been much controversy with the Tax Commission over whether or not the software is taxable. He said the Council believes it really is a 'service' as it is something accessed outside the state, and the software doesn't permit one's computer to operate. It only allows the user to perform functions that otherwise might be performed by employees or consultants of the user, so it is very much like a service. He said also, there is no 'transfer' or 'use' of this software 'to' the user. The software resides on the server of the seller and developer of the software. He said this legislation will clarify this in the statute by refining the definition of software to relieve controversy between taxpayers and the Tax Commission.

**Mr. Smith** said this is the second version of this bill. He said the original bill would have exempted 'all' remotely accessed software, regardless of whether comparable software could be obtained in another fashion. He said they sat down with the Tax Commission to work toward agreement, and those discussions resulted in **H 243**. In response to Senator Hill's question, he said the language was added as a result of those discussions. **Mr. Smith** said if he can be so bold as to summarize the concerns of the Tax Commission, he would describe them here: the Commission was concerned this legislation appeared to be an attempt to protect a business-type transaction, so they didn't want to include entertainment applications as something that could be covered under this statute. That is why entertainment is carved out from this exclusion. Secondly, he said, from a tax policy standpoint, they were concerned about an exemption for something when the function performed on a remotely accessed software could also be performed by a disc, software, or download from the seller, in which the transaction would regularly be taxable. He said the Tax Commission did not believe that to be fair, so **Mr. Smith** said that's why the legislation provides if the remotely accessed software could be also be purchased or downloaded in a form that would otherwise be taxable, the remote access would be taxable.

**Mr. Smith** said the question has been asked about what other states are doing for this concept, and he said, "Frankly, the other states are all over the map on this issue." He said some exempt 'all' forms, even downloaded software. Some states are doing what Idaho is doing, such as Kansas, California, Nevada, Vermont, Illinois, Alabama, Missouri, Wisconsin, Nebraska, Iowa, Florida, Rhode Island, and Virginia. A few states, like Washington and Utah, do tax cloud services. He said there is 'no uniformity' to how other states are handling this. He said they believe that clarifying it and providing a better market for it in Idaho will be key to the growth of the industry in this state.

**Senator McKenzie** asked how this law will work in actuality, and he gave an example from his own business. He said Quickbooks can be purchased at a retail store, downloaded to a server, or accessed online, noting that the functionality is similar on each, except there are a few things that can be done online that cannot be done with the downloaded version. He asked if he was correct that all three of those options appear to be taxable events. **Mr. Smith** said he believes that is correct. If functionality is very similar or the same, he believes all three would be taxable under this bill.

**Senator McKenzie** asked what would be an example of remotely accessing software that could not be downloaded. **Mr. Smith** said he is not a software expert, but he said his understanding is there are 'a lot' of software applications that are remote where the developer does not offer online or tangible disc form. He said he guesses that will be the trend of the future. He said there are more and more advantages to cloud computing, including increased capacity, because the computers are operated by the developer. One big advantage of accessing the program remotely is the computer capacity of that seller's entire network is way beyond one's own capacity.

**Senator McKenzie** said that is the trend for his firm, in that every function that can be purchased can also be done online. He said but unless it is custom software, which is already exempted, he would like to understand some examples of how this would apply beyond the entertainment area. He is looking for how to apply this to business software that is not custom and cannot be downloaded. **Mr. Smith** said he would like to defer to some of the software experts who are available to speak later.

**TESTIMONY:**

**Chairman Siddoway** invited Jeff Sayer, Idaho Department of Commerce (Department), to the podium. **Mr. Sayer** said he is here to support **H 243**, in an effort to create context as to why software is so important to the state of Idaho. He directed the Committee's attention to the handout of the bar graph. (See Attachment 3.) He said the software industry is one of two the Department is nurturing and encouraging to grow. He said there is a robust group of people in the Treasure Valley and across the state who see this as one of Idaho's future opportunities. **Mr. Sayer** said one reason the Department supports their efforts is that the median income is substantially higher than base industries in Idaho. He said more importantly, Idaho needs to create a friendly environment for software companies. He said something he says frequently is, "A software job in Idaho is one of the hardest to get and one of the easiest to lose." He said this industry is very mobile, and the Department is working very hard to attract those companies to Idaho, as well as working to support the ones that are here to grow and be successful. **Mr. Sayer** said **H 243** is a clarification that can support existing companies and draw the attention of companies in the rest of the world to establish that Idaho is "software friendly."

**Mr. Sayer** said this bill passed the House very favorably, and within a week, the Department received a call from one of the largest cloud software companies in the nation applauding Idaho's efforts and asking for ways they can now engage in conversations with Idaho to increase their partnership in this state. He said that is the level of visibility this issue is getting across the country, and he said the Department of Commerce adds their "wholehearted endorsement" to this bill.

**Senator Hill** asked if a software provider company is doing business in Idaho, this bill will only exempt them from sales tax within the state of Idaho, and any sales outside the state of Idaho are still subject to sales tax of the purchaser's state. He said this will help software developers outside of the state just as much as it helps software developers in the state. **Mr. Smith** approached the podium to answer the question. **Mr. Smith** said it is complicated because a lot depends on where the sale occurs. If a sales transaction occurs in Idaho by a software developer, then this legislation would help the software developer. He said that is not the position the Tax Commission has taken. He said their position is the sale occurs at the location of the buyer. If that is the right way to interpret the law, and he said states go both ways on this, then this legislation wouldn't be necessary with respect to those types of transactions, because the software seller in Idaho would not be taxed. He said if this legislation passes, a software transaction from a seller in New York to a buyer in Idaho would not be subject to tax unless it has nexus in Idaho. If the legislation does not pass, the Idaho user of the software might be subject to tax on a use tax basis.

**Senator Hill** asked if this legislation makes that clear or if it is still so complicated that those issues haven't been addressed. **Mr. Smith** said he thinks it is complicated under 'existing' law, but not under this clarification.

**Senator Werk** said "the pitch" being made is that this is great for software developers in Idaho, but software developers in Idaho don't pay this tax, the users do, so the beneficiaries of the definition that the Committee is being asked to pass aren't software developers in Idaho or anywhere else, except for users of their product will no longer have to pay tax. He said he is trying to understand how he is helping the software industry in Idaho by simply allowing limited amounts of companies that are going to use these "services." He said it seems most of the market for a software developer in Idaho is all over the world. He asked who is directly benefiting from what is being done in this legislation. **Mr. Sayer** said what he can say is the genesis of this whole effort has been a handful of key software companies who were being assessed some fairly large penalties from the Idaho State Tax Commission. He said he hears what Senator Werk is saying but some of Idaho's best companies were being assessed significant amounts, so



this clarification helps them remedy that concern. He said going forward, if the user pays tax, the company still has to assess the tax, and it leaves them at a disadvantage with their competitors who do not have to assess that tax.

**Senator Werk** asked if he heard Mr. Sayer say that software developers are large 'users' of these cloud based services. **Mr. Sayer** replied what he meant is if the user has to pay the tax, the developer will assess that cost as part of their transaction, and that would leave them at a disadvantage to the company that did not have to assess that tax. **Senator Werk** asked if it is considered to be a use tax that would be the responsibility of the purchaser to remit to the Tax Commission. **Mr. Sayer** said he would have to defer to the actual companies, as that is where he gets vague.

**Senator Hill** said with respect, he would disagree with Mr. Sayer. He said he likes the bill, but he doesn't want to sell it as an economic tool, because he thinks the sales tax is assessed where the purchase is made, which is what Mr. Smith just said. He said if he has a manufacturer inside Idaho, he will still have to assess the tax or the user will have to pay the use tax. He said it doesn't put him at a competitive advantage or disadvantage. A buyer in Idaho, whether purchasing from an Idaho company or one outside the state, will be subject to the tax the way the Tax Commission does it now, or not subject to tax under this bill. He said he doesn't see the competitive advantage that Mr. Sayer is describing.

**Mr. Sayer** said he fully respects that perspective, and suggests deferring that same question to the companies because they can speak to the details of that. He said what the Department does know is there is a definite assessment being made, historically, retroactively, on the existing companies that is causing a barrier. He said this clarification bill will create a "software friendly" environment in Idaho.

**Chairman Siddoway** invited Doug Bates, Founder and Chief Financial Officer of Clearwater Analytics, to the podium. **Mr. Bates** said his investment portfolio reporting company is based in Boise with most of their 230 employees, and they also have offices in New York City and Scotland. He said they serve about 4,000 institutional clients around the world, including Micron and United Heritage Insurance, as well as Citibank, Apple Computer, JP Morgan and others. He said services they provide include investment portfolio accounting, compliance, performance and risk reporting services. **Mr. Bates** said Clearwater's services are provided entirely over the internet and as such would be considered a Software as a Service (SAAS) or "cloud-based" business. Mr. Bates' presentation can be read in its entirety in the written testimony he submitted. (See Attachment 4.)

**Senator McKenzie** asked if the service itself, through accessing software, is comparable to software that accountants in Idaho can download and are providing the same service, doesn't the exception to the exception cover that; or, if it's custom to one's business, isn't that already covered under the custom software exception to tangible personal property. **Mr. Bates** answered he thinks they have to be careful using the term "download" because no one "downloads" from the cloud. He said similar to services of an accountant or attorney, his company provides a service that is supported by software held in database registers within the cloud that can be anywhere in the world, but none of their clients can download that service.

**Senator McKenzie** said his question was not focused on the "download" issue, but rather the custom software provision. He asked if clients access custom software that Clearwater developed, isn't that already covered under this bill in the custom software exemption. **Mr. Bates** said he didn't know and would have to defer to the tax experts on that.

**Chairman Siddoway** invited Caroline Merritt, Boise Metro Chamber of Commerce (Chamber), to the podium. **Ms. Merritt** said the Chamber includes 1,800 members, many of which have a vested interest in this issue, either as providers as cloud-based services or as companies who access these services.

She said the Chamber has significant concerns that imposing a sales tax on cloud-based services could have a "chilling effect" on their ability to retain existing Idaho companies or recruit new technology companies to Boise. Ms. Merritt's presentation in support of **H 243** can be read in its entirety in the written testimony she submitted. (See Attachment 5.)

**Chairman Siddoway** invited Jonathan Parker of Holland and Hart to the podium. **Mr. Parker** said he is representing his client Internet Truck Stop, founded and headquartered in Idaho. Mr. Parker's presentation can be read in its entirety in the written testimony he submitted. (See Attachment 6.)

**Chairman Siddoway** pointed out that everyone on the sign-in sheet who signed up to testify is in favor of this bill. He asked if anyone in the audience had travelled a long distance to be here to testify, because the Committee is out of time and the members are late returning to the floor. Jody Cedrick of Zenware approached the podium. **Mr. Cedrick** said his company is a local company. He said wanted to address Senator McKenzie's question. He said he provides two software solutions, one called Zentouch, which is an enterprise class cloud-based software that they provide to service industries like HVAC (Heating, Ventilation and Air Conditioning), plumbers and electricians. He said they have full access to their software anywhere, strictly as a service on their mobile devices. He said if a client discontinues his service, he shuts down access to their company the day they end service. He said their software is designed to manage and host all the software that the clients use as a service. They own nothing and when they discontinue use of the software, they are cut off.

**Mr. Cedric** said it provides a great environment for them to use software that they otherwise could not afford. He said if they were to buy something off the shelf, it would cost them a minimum of \$50,000 to buy an equivalent software that he provides them at \$50 per month per technician. He said that provides a huge advantage to small businesses within Idaho and outside of Idaho. He said he hopes that clarifies things a bit.

**Senator McKenzie** said he thinks that is a taxable event to them, if they can buy it. **Mr. Cedric** interrupted and said they can't buy it because he doesn't distribute it. **Senator McKenzie** said he thought he understood Mr. Cedric said they could buy a comparable product for \$50,000. **Mr. Cedric** interrupted and said they could from a competitor. **Senator McKenzie** said then it comes under the comparable computer software that performs the same function. **Mr. Cedric** interrupted with the question, "How so, because..." and **Senator McKenzie** reiterated that Mr. Cedric just said they could buy a comparable computer software that performs the same functions, and they would have to pay a competitor \$50,000. **Senator McKenzie** said if that exists, then it is a taxable event, which is the same situation with the Boise Chamber comments. He said if companies are getting access to products rather than buying them, but if they could buy them, it is a taxable event. He said he thinks this bill is a good principle, but if the exception swallows up what is trying to be accomplished here, he thinks a lot of people will be surprised that they have taxable events they didn't expect. **Mr. Cedric** said he would disagree with the Senator on that. He said nonetheless, he thinks this is a great bill that defines cloud services.

**ADJOURNED:** **Chairman Siddoway** said the Committee is out of time and will reconvene this week. He adjourned the meeting at 4:43 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:00 P.M.**  
**Room WW53**  
**Wednesday, March 20, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Review of Minutes of March 5, 2013	<b>Senator Werk</b>
<a href="#"><u>H 243</u></a>	Relating to Sales Taxation and Application Software Accessed over the Internet	<b>Jay Larson</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Wednesday, March 20, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:03 p.m.

**H 243** **Chairman Siddoway** said the Committee would finish hearing **H 243** today as the Committee ran out of time Tuesday, when the Senate reconvened at 4:30 p.m.; the Committee was still taking testimony at 4:45 p.m. **Chairman Siddoway** invited Jay Larson, President and CEO of the Idaho Technology Council, to the podium to continue the presentation of **H 243**, relating to sales taxation and application software accessed over the internet. **Mr. Larson** said the bill clarifies cloud services 'are' a service, like legal or accounting services, hair cut services, etc. and as such should 'not' be subject to sales tax. He said this bill has been worked on diligently for the past six months to take out ambiguity and clearly define what a cloud service is. He said it is fair and consistent with other state tax policy.

**MOTION:** **Senator Hill** moved to send **H 243** to the floor with a **do pass** recommendation. **Vice Chairman Rice** seconded the motion.

**DISCUSSION:** In discussion, **Senator McKenzie** said he thinks this is a good bill and the right policy. He said the issue will become more and more important as businesses move more functions to online services. He said it is getting to the point where it will not be necessary for most businesses to have extensive servers and hard drives, especially small businesses because they can have data stored and services operated online. **Senator McKenzie** said his only concern is the language that seems to be an exception to the exception, where it says this exception does not apply if one can buy "comparable computer software that performs the same functions." He said he thinks one can get comparable software for most things these days, and when he tried to think of exceptions to that scenario, he thought of internet trucking. **Senator McKenzie** said while he thinks there may be an issue of businesses that erroneously think this may apply to them, he will still support this bill.

**Senator Rice** pointed out that in the language a little before the segment Senator McKenzie referenced, it talks about the exception to the exemption being for the 'vendor' that provides it online 'and' also sells the same or similar software at wholesale or retail. He said as long as the person who provides the online service doesn't sell it, the exemption applies. **Senator Rice** said he thinks it is good language and a great bill.

**Chairman Siddoway** said he would reiterate Senator Rice's point. **Chairman Siddoway** said he understands the language the same way Senator Rice just explained, in that there has to be some kind of a nexus for them to be obligated to collect that tax. If there is not that nexus, then they won't.

**Senator Werk** apologized for coming in late and asked for clarification of the motion. **Chairman Siddoway** said a do pass motion is before the Committee. **Senator Werk** said he would like to comment on the nature of how this bill has been presented. He said he views it, as he believes other people do, that the question is whether or not this is a 'service' rather than a physical product. He said his vote will be based on that, not on whether the bill will have business development impacts, which he felt was "off the mark." He said he did not want to offend anyone, but his vote is confined to whether or not this is a service.

**Chairman Siddoway** said in the development of this bill, there was much discussion as to whether it should be done by definition or exemption. He said it became evident that even in writing the exemption, there still need to be definitions of terms.

Motion carried by **voice vote**.

**Chairman Siddoway** said there was a bill on the agenda earlier in the day, but the sponsor, Senator Werk, requested that it be withdrawn from consideration, with plans to bring it forward next session. **Senator Werk** said he realizes this Committee has some important work to get done in the next few meetings. He said he felt wanted to spare the Committee the effort of hearing a bill, knowing it would need to go to the amending order and all the steps back and forth between the House before adjournment sine die. He said the bill will be cleaner next year.

**MINUTES:** **Senator Werk** moved to approve the minutes of March 5, 2013. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:13 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #1**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**3:30 P.M.**  
**Room WW53**  
**Thursday, March 21, 2013**

SUBJECT	DESCRIPTION	PRESENTER
	*****PLEASE NOTE TIME CHANGE TO 3:30 P.M. *****	
MINUTES	Review of Minutes of March 13, 2013	Senator Bayer
<a href="#">H 80</a>	Relating to Enhanced Emergency Communications Grant Fees	Garret Nancolas, Mayor of Caldwell
<a href="#">H 315</a>	Relating to Personal Property Tax	Seth Grigg, Idaho Association of Cities

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway	Sen Vick
Vice Chairman Rice	Sen Bayer
Sen Hill	Sen Werk
Sen McKenzie	Sen Lacey
Sen Johnson	

COMMITTEE SECRETARY

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MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Thursday, March 21, 2013

**TIME:** 3:30 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) to order at 3:30 p.m.. There was a later start time posted due to the floor session running long.

**MINUTES:** **Senator Werk** moved to approve the minutes of March 20, 2013. **Senator Hill** seconded the motion. Motion carried by **voice vote**.

**Senator Bayer** moved to approve the minutes of March 13, 2013. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

**H 80** **Chairman Siddoway** invited Garret Nancolas, Mayor of Caldwell and Chairman of the Emergency Communications Commission, to the podium to present **H 80**, relating to enhanced emergency communication grant fees. **Mr. Nancolas** said the Emergency Communications Commission (Commission) was created by the legislature in 2004, and he has chaired the Commission since its inception. He said they were given the challenge to improve the Public Safety Answering Points (PSAPs) and communications services for 911 services throughout the state. He said the Commission has taken the task seriously and done exactly what was asked of it. He said they could not have done it without more help that came in the form of a grant fund in 2008. The fund helped counties and PSAPs make improvements through phase one and move toward phase two.

**Mr. Nancolas** said most counties in the state are through phase two and some are almost ready to go to "next generation" technology where available. He said they have issued more than \$6 million in grants to counties and PSAPs that otherwise could not have been able to add to their systems and be where they currently are. The result is people would not have been able to reach emergency services when they needed them. Now, when people dial 911, there is quick and efficient response because the systems have been improved so dramatically.

**Mr. Nancolas** the purpose of **H 80** is to remove the sunset clause and allow this program go forward so they can continue to offer grants throughout the state and keep making improvements to emergency communications systems. It is important because technology changes so quickly.

**Senator Bayer** asked if Mr. Nancolas remembered the original bill with the initial authorization for this program. **Mr. Nancolas** said he doesn't remember that information.

**Senator McKenzie** said he appreciates the presentations on this matter in the Senate State Affairs Committee. He said it has been a huge benefit in getting enhanced emergency communications implemented. He asked for more history on this bill, specifically why the sunset clause was there in the first place.

**Mr. Nancolas** said the original thought was that members of the legislature wanted to see if this really would do what the Commission proposed it would do. He said they put the sunset clause in so that if it wasn't working, the program would end. He explained that counties had to authorize their corridor to be added to the 911 fee to be eligible for the grant program. Most are eligible, but some counties chose not to participate and were not eligible for the 25 cents. That provision remains the same.

**Senator Johnson** asked why some counties have not opted to assess the additional 25 cents for this benefit. **Mr. Nancolas** answered he cannot speak for the counties that did not opt in, but his understanding is that they were already at or close to phase two and didn't see a reason to assess the fee. He said, however, as technology and the program moves forward, those who have not utilized the benefit in the past may do so in the future.

**Senator Johnson** asked of the 25 cents per line, how much goes to the counties. **Mr. Nancolas** replied when the Commission was set up, it was funded by one percent of the total one dollar. When the quarter went into effect, one penny went to fund the Commission and 24 cents of the 25 cents goes into the grant fund. All 24 cents is eligible for grants.

**Senator Johnson** asked if the county contributes \$100 and will get back \$100, or do some pay more and get less. **Mr. Nancolas** said the grants are available to 'all' counties who apply, so they may not get back every dime they put in, but there are counties who will receive a lot more than what they put in. He said that is the purpose of the fund, to help those counties that had the most need first. He said the Commission set up rules for the grant, and one criteria for receiving a grant is "those who need it the most" because they simply don't have the funds to build up a system on their own.

**Senator Werk** commented that he quickly researched and found that the original bill was H 447.

#### TESTIMONY:

**Chairman Siddoway** invited David Moore, Blackfoot Chief of Police, to the podium. **Mr. Moore** said he was here to testify in support of **H 80**. He said he was actively involved in getting the original legislation passed. He said when the 911 coverage is compared from 2001 to where it is now, it is a dramatic difference, but the expansion of 911 technology is not yet complete, so he urges the Committee to support this bill and remove the sunset clause. His statement and a written letter can be read in full in the attached documents. (See Attachments 1 and 2.)

**Senator Hill** said while **H 80** removes the sunset clause, there is no provision in the bill to reduce it if that were to become necessary, so it could go on forever. He asked Mr. Moore if he sees a time where the state and counties will be caught up with technology, or will they always be behind and always need the fee. **Mr. Moore** said he would like to see a time when it wasn't needed, but five years ago, they did not see "Next Generation 911" coming, and they were so far behind on "basic 911." He said it took five years to get 911 enhanced through phase one and phase two statewide. He said 43 of 44 counties are in phase two, and the last one just got their grant. He said the counties just do not have the funds to put into the programs. **Senator Hill** asked if they ever get caught up, will they come back and ask for the fee to be removed. **Mr. Moore** answered, yes.



**Senator Bayer** asked for Mr. Moore's opinion on removing the sunset as opposed to just 'extending' it, so there would be a time in the future to reevaluate again. **Mr. Moore** replied that when they came to the legislature in 2008, they were prepared to show they had to make progress with the funds collected and redistributed. He said Lemhi County could not have made up in 15 years the funds they received in one grant. He said they will do whatever the legislature wants them to do, but they think they can continue to show progress toward "Next Generation 911."

**MOTION:**

**Senator Werk** moved to send **H 80** to the floor with a **do pass** recommendation. **Senator Lacey** seconded the motion. Motion carried by **voice vote**.

**H 315**

**Chairman Siddoway** invited Seth Grigg, Policy Analyst with the Idaho Association of Counties, to the podium to present **H 315**, relating to personal property tax. **Mr. Grigg** said this bill has been a collaborative effort by local governments, including the cities, counties, and school districts, as well as lawmakers on both sides of the rotunda. His complete statement can be read in the attached document. (See Attachment 4.)

**Mr. Grigg** gave a brief history and overview of the bill. He referenced the changes to Idaho Code § 63-602KK that was enacted in 2008 with H 599a which established a \$100,000 personal property tax exemption. (See Attachment 3.) He said it was contingent on the growth in the state economy, but when that didn't happen, state revenues declined dramatically and they have yet to return to 2008 levels. He outlined the provisions of what **H 315** would do. 1) Create a de minimus exemption of \$3,000, which means items that have an acquisition cost of \$3,000 or less would be exempt. He said the intent is to prevent the taxpayer from "sectionalizing" or paying in installments. He said an additional intent is to prevent items that are difficult to track and have minimal value, such as computers, desks, chairs, restaurant furniture and the like.

**Senator Hill** asked a question by giving an example. He said if he started a new restaurant and bought 10 tables and 40 chairs all from one supplier, but none of them individually cost more than \$3,000, he would not need to count any of those items. **Mr. Grigg** replied, yes, that is correct.

**Senator Werk** asked if someone were to purchase a large piece of equipment and chop it up into pieces and the aggregate of the pieces does not exceed \$3,000, would it be covered under the de minimus. **Mr. Grigg** answered that is correct, and the language shows any item of taxable personal property that is not an individual component part of a piece of equipment, machinery or furniture or other personal property is not included. He said that language was added after discussion about this session's original bill H 272.

**Mr. Grigg** addressed the second and third provisions of **H 315**. 2) Remove the \$100,000 trigger for exemption and allow it to occur this year, and the exemption would include operating property. He said that would add approximately \$500,000 to the overall fiscal impact. He said based on data from the Idaho State Tax Commission, replacing this revenue will be approximately \$21 million or less. The money will be replaced from the sales tax distribution formula. He explained that as sales tax dollars come into the state, some monies are siphoned off for revenue sharing with local governments, and that is how this money will be handled before it goes to the general fund. He said there is also language that the \$21 million amount is "fixed in time" with the intent to provide certainty to the state. 3) Create a simplified application process. He said they would often hear how onerous the application process and tracking process is. It will be a uniform application to use consistently across all counties. Taxpayers under the \$100,000 threshold would file an affidavit only once every five years instead of annually.

**Mr. Grigg** said the Tax Commission wanted to exclude certain items from exemption, such as motor vehicles, aircraft and boats not registered in Idaho, which means a business owner with a vehicle not registered in Idaho will be subject to personal property tax.

**Senator Vick** asked if the assessors' offices will notify the business owners about the expiration of the application, or if it would be the owners' responsibility. **Mr. Grigg** replied the assessor will send out the application by March 1 of each year, and they will run a query in their software to send it to the correct taxpayers. He said the intent is to make it as easy on the taxpayer as possible. **Mr. Grigg** pointed out this bill also includes language that would allow the assessors to send out "e-assessment notices" which would be email notices, if the taxpayer were to request it.

**Senator Hill** asked a detail about the five year application process, and if during that five years a business purchases a large piece of equipment over the \$100,000 threshold, they would have the responsibility to report it and pay tax on it. The five year application does not mean they can go five years without paying. **Mr. Grigg** answered yes, that is correct, and in order to fall under that five year category, they have to remain under that \$100,000 threshold. He said in existing law, there is a penalty for a business that "knowingly fails to report."

**Senator Hill** asked how far the Tax Commission can go back, as in for example, a business is under the \$100,000 threshold, but then two years later purchases a \$250,000 piece of equipment and it isn't discovered for three years. Can the county go back and assess personal property tax for that item. **Mr. Grigg** replied yes, the county can go back seven years if they find an exemption was erroneously claimed.

**Senator Werk** asked about some confusing language in the emergency clause on this bill. **Mr. Grigg** replied there was a lawsuit in Boise County a few years ago that prompted change in the legislation for them to have a bonding ability. Because H 315 replaces H 599aaSaaS, the language in one will expire July 1, 2017, and when that hits, a new code section will kick in. He said that is why the clause sounds confusing. **Senator Werk** said thanks, that makes sense.

**TESTIMONY:**

**Chairman Siddoway** invited several guests to share their testimony on **H 315**. Speaking in favor of **H 315** were: **John Evans**, Mayor of Garden City speaking as the President of the Association of Idaho Cities; **Jessica Harrison**, Policy and Government Affairs Director for the Idaho School Boards Association (See Attachment 5); **Phil Homer**, representing School Administrators Association of Idaho; **Pat Charlton**, Superintendent of Vallivue School District; **Donna Peterson**, Payette County Treasurer and Chair for the Idaho Association of Counties (See Attachment 6); **Gordon Cruickshank**, Valley County Commissioner and Idaho Association of Counties Legislative Committee member (See Attachment 7); **Brent Adamson**, Boise County Assessor and Idaho Association of Counties (See Attachment 8); and, **Caroline Merritt**, Boise Metro Chamber of Commerce (See Attachment 9) Also providing written testimony in support of **H 315** were Travis Rothweiler, City Manager for City of Twin Falls (See Attachment 10) and Janice Lawes, Bingham County Treasurer (See Attachment 11)

**MOTION:**

**Senator Hill** moved to send **H 315** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion.

**DISCUSSION:**

During discussion, **Senator Vick** asked if there was ever discussion of putting an inflation index on this number. **Chairman Siddoway** said his recollection of all the negotiations that they never did talk about an indices on this. He said they always talked about using 2012 as the base year, but for some technical reasons that was not possible, so they ended up using 2013 figures.

**Senator Vick** said he would like to comment that he is generally in favor of tax cuts, but it is odd for him to see taxing jurisdictions in favor of cutting taxes. He said in all his years of legislative experience, this is a first for him.

**VOTE:** Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:20 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary

**AMENDED AGENDA #2**  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**  
**2:00 P.M.**  
**Room WW53**  
**Tuesday, March 26, 2013**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>**Please NOTE: Change of TIME to 2:00 p.m.**</b>		
MINUTES:	Review of Minutes from March 6, 2013	<b>Senator McKenzie</b>
PRESENTATION	Presentation for Senate Local Government and Taxation Page	<b>Carson Cole</b>
<a href="#"><u>HCR 32</u></a>	Relating to Tax Commission Rule 33 and 2012 Instructions for withholding	<b>David Langhorst, Idaho State Tax Commission</b>
<a href="#"><u>H 133</u></a>	Relating to Recording Fees for Mining Claims	<b>Kerry Ellen Elliott and/or Seth Grigg, Idaho Association of Counties</b>
<a href="#"><u>H 286</u></a>	Relating to Education and a Tax Credit to Contributions Made to a Scholarship Granting Organization	<b>Senator Nonini</b>

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Siddoway  
Vice Chairman Rice  
Sen Hill  
Sen McKenzie  
Sen Johnson

Sen Vick  
Sen Bayer  
Sen Werk  
Sen Lacey

COMMITTEE SECRETARY

Christy Stansell  
Room: WW50  
Phone: 332-1315  
email: [sloc@senate.idaho.gov](mailto:sloc@senate.idaho.gov)

MINUTES

## SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**DATE:** Tuesday, March 26, 2013

**TIME:** 2:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 2:02 p.m. He thanked everyone for attending at this different hour than the Committee usually meets. He emphasized this meeting only has 'one' hour as the members are due on the floor at 3:00, so he encouraged everyone to be succinct in their presentations.

**MINUTES:** **Senator McKenzie** moved to approve the minutes of March 6, 2013. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

**PRESENTATION:** **Chairman Siddoway** thanked the Committee Page, Carson Cole, for his service in the Committee during the second half of the session. He said, "We want to thank you. You have done a great job! You stayed awake during taxes!" He asked Mr. Cole about his future plans. **Mr. Cole** said he plans to go on an LDS mission, get into college, perhaps join the armed services to help pay for school and see the world, go to medical school and become an anesthesiologist or oncologist, and he added, "then retire happily, like Senator Hill." **Mr. Cole** thanked everyone for the opportunity.

**HCR 32** **Chairman Siddoway** invited David Langhorst of the Idaho State Tax Commission (Tax Commission) to the podium to explain **HCR 32** relating to the Rule 33 and 2012 instructions for withholding. **Mr. Langhorst** said, "We need this resolution." He said this resolution required the cooperation of several people on both sides of the rotunda and he stands in total agreement with Bill Roden, who presented this bill in the House. **Mr. Langhorst** said the statement of purpose succinctly describes this bill's intent to rescind Tax Commission Rule 33 subsections 3, 4 and 5.

**Mr. Langhorst** offered background information. He said the Tax Commission promulgated rules in 2011 to be effective in tax year 2012 which would have changed the existing practice. Prior to that time, Native Americans working on a reservation were not taxed. He said recent case law showed that Native Americans would be taxed like any other Idaho citizen if they were working on a reservation that was not their 'home' reservation. He said that comes into play a lot in the Coeur d'Alene tribe with the casino. When the case law came up, the Tax Commission put it on their plans for negotiated rule-making. **Mr. Langhorst** said, unfortunately, through unintentional oversight, it did not make it through negotiated rule-making. He said that meant the taxpayers most affected did not know the rule was coming, and to exacerbate the situation further, the Tax Commission issued withholding rules that were different than those printed in the income tax booklet, which said withholding was not required for non-home reservation income. **Mr. Langhorst** said when the discrepancy was brought to the Tax Commission's attention, they

immediately realized they could not rightfully enforce the confusing rule and have fair and equitable administration of tax policy.

He said this resolution, **HCR 32**, was their best method for formalizing that decision so that tax preparers, taxpayers and the audit staff would have consistency to rely upon.

**MOTION:**

**Senator Werk** moved to send **HCR 32** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. Motion carried by **voice vote**.

**H 133**

**Chairman Siddoway** invited Kerry Ellen Elliott with Idaho Association of Counties to the podium to discuss **H 133** relating to recording fees for mining claims. **Ms. Elliott** said this bill corrects a statutory omission and oversight that occurred when the recording fee schedule was amended in 2010. She said three years ago, legislation amended the schedule which had not been adjusted since the early 1980s. She said the intent was to treat similar documents equally and provide funds to recording offices so they could be self-supporting and fund technology upgrades such as scanners and storage equipment. **Ms. Elliott** said the purpose was to provide efficient administration of documents and to better serve the public. The Idaho Association of Counties collaborated with the title companies on that 2010 legislation.

**Ms. Elliott** said this bill addresses mining claim documents, which are similar to those that meet the general document recording fee structure. She said current statute provides a separate fee for mining claim documents of \$3 for the first page and \$3 for each subsequent page; however, they should be assessed the same fee of \$10 for the first page and \$3 for each subsequent page that is already assessed for other similar documents. The bill strikes that subsection h and puts mining documents under subsection a. **Ms. Elliott** said the bill does not affect any other documents.

**Ms. Elliott** said the need for this correction came to the recorders' attention as they entered mining claim documents into the system and realized the system was attaching the correct fee code for that type of document, but it didn't match the statutory fee. That caused them to have to do a manual adjustment to the fee and reset their system so the system and statutory fee matched correctly.

**Ms. Elliott** said she is not aware of any opposition to this legislation. She said she has spoken with representatives of both the Idaho Mining Association and the Idaho Gold Prospectors Association and neither has any opposition. She said there may be a revenue increase to the recorder's office but that would be dependent on the volume of reporting. She said mining claim documents can be anywhere from one to six pages. The average recording is four pages, which would go from \$12 to \$19, as the first page costs \$7 more.

**Ms. Elliott** said based on 2012 data from counties, the revenue to the recorder's office could increase \$40,000 to \$50,000 statewide. She said all counties do some sort of recording, noting that in 2012 there were 5,924 mining claim documents recorded. She said that is the figure on which they based the revenue increase projections. She said the counties who have the most claims are Butte, Lemhi, Boise, Custer, Valley, Idaho, Owhyee and Shoshone Counties. **Ms. Elliott** concluded by saying the bill will ensure the appropriate fee is assessed to mining claim documents and that similar documents are administrated equally, uniformly and consistently, as is intended.

**Vice Chairman Rice** said he would like to declare his potential conflict of interest as he has fractional interest in some mining claims.

**Senator Bayer** asked for more history on the current practice. He said as they strive to provide uniformity and consistency, why would there be a potential increase of approximately \$50,000. He asked if there was deliberation on a way to account for current practice and facilitate language so that the net effect could be closer to \$0.

**Ms. Elliott** replied they polled all the counties and heard from nearly everyone. She said 5,924 mining claim documents were recorded in 2012 and assumed a similar number of claims would be recorded in 2013. From there, they extrapolated the figure given the first page cost increased to \$10. **Ms. Elliott** said they cannot know for sure how many claims would be recorded as it is volume driven and depends on what is happening in the mining industry, but every county does some kind of mining recording. She said in 2012, Ada County had six, Gooding County had one, and Lemhi had over 1,000. She said the mining claim documents were falling under subsection a, so this bill is designed to match what is happening in practice, where they all ought to adhere to that first page cost.

**MOTION:**

**Senator Lacey** moved to send **H 133** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion. Motion carried by **voice vote**.

**H 286**

**Chairman Siddoway** invited Senator Bob Nonini to the podium to present **H 286** relating to education and a tax credit for contributions made to Scholarship Granting Organizations (SGO's). **Senator Nonini** asked the page to distribute two handouts while he gave a brief overview of each section of the bill. (See Attachments 1 & 2.) He described it as a "choice in education" bill. He said a study recently done by the Albertsons Foundation ranks Idaho "considerably lax" in the area of "choice in education."

**Senator Nonini** said he would address the concerns about this bill being unconstitutional. He directed the Committee's attention to the eight page letter of opinion from the Idaho Attorney General's Office, dated December 28, 2012. (See Attachment 1.) He said the opinion is that the bill 'is' constitutional. He quoted from the first paragraph on the first page where it says, "The analysis below concludes that, while the provision of tax credits with respect to contributions to entities comparable to the scholarship granting organizations has provoked, and likely will continue to provoke, substantial litigation, the draft legislation can be defended as consistent with the United States and Idaho Constitutions in the context of a facial challenge."

**Senator Nonini** asked the Committee to turn to the second paragraph on page two, where it states, "The draft legislation does not involve any transfer of state funds. It does not restrict scholarships to particular non-public elementary and secondary schools that otherwise satisfy "qualified school" status; i.e., both sectarian and nonsectarian schools receive equal treatment."

**Senator Nonini** said he believes the bill does not give any special treatment to any special schools. He asked the Committee to go to page seven in the last sentence of the second paragraph where it reads, "this Office would defend the law's facial validity vigorously with respect to an Establishment Clause challenge." He said his reason for showing this to the Committee is the Attorney General believes the bill is constitutional.

**Senator Nonini** said there have been concerns, questions and comments raised about the fiscal note. He said he shows in the statement of purpose his projection of saving the state several million dollars, and he would like to show the Committee how he arrived at that conclusion. He asked the Committee to refer to the handout titled "Friedman Foundation for Educational Choice." (See Attachment 2.) He said this is the group that helped him put together the bill. He said the best available data from other states is from Arizona and what they have experienced since they have had the law in place for several years now. He said the data from Arizona suggests that when a credit like this is available, roughly one percent of the total charitable giving in that state will be given to SGO's.

**Senator Nonini** said based on the data from the 2009 IRS returns for Idaho citizens, there was more than \$764 million in charitable contributions. He said using the Arizona one-percent figure, that translates into \$7.6 million, as shown in Table 1.

**Senator Nonini** said Table 2 relates to the corporate side of things using the Arizona data where there were 80 corporations that donated to the Arizona SGO under their corporate tax credit program. He said if the equivalent amount of companies in Idaho were to donate, it would be 24 companies who donated and claimed the credit, and the amount would be \$155,280. He said Table 3 shows the total fiscal impact of \$7,795,450 - which he rounded up to \$8 million.

**Senator Nonini** described how they try to limit the availability of the scholarships. He said it is not a "wide open scholarship program" in that students must 'qualify' based on family income, which he said is 185 percent of the poverty level or 150 percent of the reduced lunch income level. He then referred to Table 4 and the enrollment information provided by Jason Hancock from the State Department of Education. He said 288,026 children are in public education and 10,167 in private schools in Idaho. Of the children in public education, 171,087 are eligible for scholarship, and 929 private school children would be eligible.

**Senator Nonini** said to be eligible, students have to be attending a private school for the 'first' time, whether that is attending a public school the prior semester, entering kindergarten or first grade or by moving into the state of Idaho. Therefore, not every child would be eligible. He said some supporters of the bill were not happy about that aspect, but he said they can't just "open the floodgates."

**Senator Nonini** commented on the "price elasticity of private school demand." He said it means that a one percent decrease in the cost of private school yields a three-quarters of a percent increase in the demand for private school. He said as the tuitions for private schools go down, because a scholarship could be available, the opportunity or the 'demand' to get into private school will go up.

**Senator Nonini** described Table 5 which shows if there are \$8 million in available scholarships, and the estimated average private school tuition in Idaho is \$7,900, and the average scholarship under the program is \$2,525, cost of private school tuition decreases by nearly 32 percent. He said this demonstrates the price elasticity in which price goes down, and demand goes up, which he said is estimated at 24 percent. If 2,622 students transfer from public to private school, and 465 other students are eligible for the scholarship, that would be 3,087 children receiving scholarships. He said dividing the \$8 million by 3,087 children works out to be the \$2,525 scholarship figure.

**Senator Nonini** said the Friedman Foundation helped him determine the savings to the state of Idaho. He said last year's Total Idaho Education Formula Spending, as provided by Jason Hancock, was \$1.2 billion, divided by the 288,000 children enrolled in public school, which results in \$4,251 spending per student based on average daily attendance.



**Senator Nonini** said the overall state fiscal impact is expected to be a net savings to the state equal to \$3,350,000. He said he arrived at that figure by taking the \$8 million in combined individual and corporate donations, then subtracting the public school transfer student number of 2,622 multiplied by the state spending per student of \$4,251 which equals \$11,146,122.

**Senator Nonini** said Table 8 discusses the local collection of property taxes for supplemental levies. He said there is about a quarter of a billion dollars statewide collected. He said that does not change even if there are 2,622 less children in schools in Idaho, because those levy amounts are not based on student enrollment.

**Senator Nonini** described how Table 9 combines the state savings of \$3.3 million and local savings of \$2.5 million to result in a total fiscal impact of \$5.8 million. He said he has heard some comments and concerns that people don't believe those numbers, but he said these numbers are all backed up by the IRS, the Tax Commission and the State Department of Education.

**Senator Nonini** said the Cato Institute has studied scholarship tax credits. He said there are fourteen scholarship tax credit programs operating in eleven states that all grant tax credits to individuals or businesses who donate to nonprofit SGOs to fund low and middle income students. He said the Cato Institute report on the constitutionality of such programs shows voucher programs have a mixed record in the courts around the country, but tax credits have a perfect constitutional record. He said a court has never overturned a tax credit piece of legislation. He said this bill is 'not' a voucher, but a 'credit' and there is a distinct difference.

**Senator Nonini** made another note from the Cato Institute on its studies of fiscal impacts. He said the report shows tax credit programs in three states have saved those states money. He said the Florida legislature's nonpartisan Office of Program Policy Analysis and Government Accountability found that their state's tax credit program saved \$1.44 in state expenses for every dollar on state taxes. He said the Commonwealth Foundation reported that Pennsylvania saved \$512 million per year and Arizona's tax credit program estimated savings between \$99.8 and \$241.5 million.

**Senator Nonini** shared some information about the impact on student performance. He said nine of ten randomized control studies in the Gold Study of Social Science Research found the school choice program had a positive impact on participating students' academic performance. He said the tenth state found no statistical impact. He said a study of Florida's program found a small but statistically significant impact on the academic performance of 'public' school students in response to the increased competition among schools.

**Senator Nonini** said they have tried to write this bill to include: the family has to have a certain income level; how the SGO works in the Department of Education; how it has to be an Idaho-based 501(c)(3); and it also has to return 90 percent of the money donated to scholarships with only ten percent for administrative fees. He said they didn't want one school to be singled out with a situation like, "If I give you a donation, will you help my friend's child get into a school."

**Vice Chairman Rice** asked if Senator Nonini spoke with the State Department of Education and the Tax Commission about the income that would have to be shared and the cost for both of them to set up and administer this program, including additional website development and staff needed for approval and tracking of the amount used during the year.

**Senator Nonini** replied yes, he did spend hours with both and actually had a rewrite of the bill. He said Mike Chakarun of the Tax Commission and Jason Hancock of the Department of Education seem to think how the bill is written would not be an issue for staff administration and website development.

**Vice Chairman Rice** asked if Senator Nonini checked with anyone about the method in which checks are distributed and if that meets the IRS guidelines for a 501(c)(3) policy for handling this situation.

**Senator Nonini** said he has not spoken with the IRS but in drafting this bill, they used language from other states that has been in compliance. He said he wants the checks to go to the school, not the parents, so that parents could not take the money for other purposes.

**Vice Chairman Rice** said the bill indicates that prior to accepting a donation, the entity is required to verify that the \$10 million hasn't been used up. He asked how that tracking is supposed to work. **Senator Nonini** said he has been working with the Idaho State Tax Commission on that to make sure the fund has not been exceeded. He said prior to accepting a check, it is the SGO's responsibility to contact the Tax Commission. He said they want to make sure a person can't just hand over a check and take the credit, because it would have to be verified that there was room under the cap.

**Senator Hill** asked how this tax credit interacts with the education tax credit already on the books. **Senator Nonini** said his understanding is that it compliments what is done in Idaho with education tax credits, because they are open to anybody. He said the people benefitting from the new tax credit would be the low and middle income people.

**Senator Johnson** said he is curious to know why with this bill the credit would be increased from \$500 to \$1,000, and why that amount was chosen, because under the educational credit that Senator Hill referenced, the amount allowed is limited to 50 percent. **Senator Nonini** said he's not sure he understands the question because he does not have a limit on this other than a corporation's liability. He said for example, an individual who owed \$150,000 in state income tax because of their income level, could donate \$150,000 to an SGO and you would get a dollar for dollar tax credit and be 100 percent relieved of their state tax liability. He said there are some limits on some of the other existing educational tax credits, like Senator Hill mentioned. He said on the corporate side, there is a limit of 50 percent, so if the company owed \$150,000, they could only be eligible to donate \$75,000.

**Senator Johnson** asked if donation and contribution are one in the same and what is the definition of those words in this context. **Senator Nonini** replied the words are used interchangeably. **Senator Johnson** asked for some examples. **Senator Nonini** said there are no SGO's existing right now, and if this legislation passed, he could see five or six opening around the state in different regions. He said if there were an SGO, he could make a \$1,000 contribution and they would get a dollar for dollar credit against their taxes. That could be a donation 'or' a contribution. **Senator Johnson** asked if he could donate goods and services. **Senator Nonini** said the way it is written, it would need to be cash.

**TESTIMONY:**

**Chairman Siddoway** reminded the audience that this is the last Committee meeting of the session and the members have to return to the floor at 3:00. He apologized saying because that is only ten minutes from now, and the eight people signed up to testify would be timed to each get one minute.

**Chairman Siddoway** invited Dale Buwalda of the Friedman Foundation (Foundation) in Indiana to the podium. **Mr. Buwalda** said the Foundation believes that quality education should be right for 'all' children, and parents should be empowered to select the school that best works for their child and meets their child's needs. He said there are currently fifteen programs in eleven different states that are similar to the program proposed in this bill, as well as several other different tax credit programs, for a total of twenty-one different programs in fourteen different states. He said Alabama just passed one last week. He said there is growing support across the country for this type of program.

**Mr. Buwalda** said one thing specific to Idaho came out of an analysis the Foundation performed. He said Idaho has a current tax credit program in which an individual or corporation can make a contribution directly to the schools, libraries and museums, even if they have a specific religious affiliation.

He said as far as legal precedent, the state of Idaho has been using 'tax credits' that can go to private institutions even if they are religious.

**Chairman Siddoway** invited Tom LeClaire of the Idaho State Republican Party to the podium. **Mr. LeClaire** said he has written testimony as well as a proclamation from the Republican Party supporting this concept. (See Attachment 3.) He said the most important thing about this legislation is that parents who need financial help to choose a private school for their kids will have a choice. He said this is what the Idaho Republican Party supports and they believe this is good education policy for Idaho.

**Chairman Siddoway** invited Chris Finch, Principle at Genesis Prep Academy in Post Falls, Idaho, to the podium. **Mr. Finch** said they serve 140 students in the Post Falls, Kootenai County, Coeur d'Alene area. He said the impact of this legislation would be tremendous because he continually has to turn away parents who aren't able to pay the full price of tuition. He said he has tuition assistance applications in his office right now and he's not sure he'll be able to help those students. If they're not able to get tuition assistance, they will have to go to public school, and that will in turn cost the state more money and not be able to give those families the choice they would like in private education.

**Senator Werk** asked if Mr. Finch's school is a 501(c)(3) and if there are 'owners' of the school. **Mr. Finch** answered yes, the school is accredited in Idaho and is a 501(c)(3) and no, they do not have owners. Rather, they have a board of representatives that legislate for the school.

**Senator Johnson** asked if it is possible that some students who currently attend Mr. Finch's school have parents who are donating to the school and receiving a tax credit on their Idaho tax returns. **Mr. Finch** said they currently supplement their school budget with many fundraisers to be able to pay for the tuition assistance requests. He said yes, families can donate to their school, and because it is a 501(c)(3), they can receive some form of tax credit.

**Chairman Siddoway** invited Phil Homer to the podium. **Mr. Homer** said he represents the School Administrators Association and the Idaho School Board Association. **Mr. Homer** read from the Idaho Constitution, "It shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public schools." **Mr. Homer** said he said, "You have done your very best and we really appreciate that." He said however, every dollar that is diverted from that revenue stream hurts the opportunity to take a portion of that dollar and apply it to the education of the students in public schools. **Mr. Homer** said, therefore, he and the organizations he represents cannot support this bill.

**Chairman Siddoway** invited Shelly Matthews, Principle at LAM Christian Academy in Coeur d'Alene, Idaho, to the podium. **Ms. Matthews** said she assumes everyone is here to help every child get the best education they can get. She said she'd like to ask the rhetorical question, "Who's responsibility is it to educate the children of Idaho? Is it the legislators' or public school administrators'? No, it is the parents' responsibility." She said the part of the constitution states legislation is to establish a system of free schools, but nowhere does it say it is the legislature's responsibility to take over the entire burden of educating 'all the children' in Idaho. She said that burden ultimately falls to the parents. **Ms. Matthews** said if their responsibility can be acknowledged by giving them back some of the means for them to carry out their duty, then every child can be given the best education they can get. She said she has parents of children with special needs, like autism and ADHD, who find her school could be the best fit for their children, but they don't have the financial means to do that. **Ms. Matthews** encouraged the Committee to look at this bill.

**Chairman Siddoway** invited Monica Hopkins of the ACLU of Idaho to the podium. **Ms. Hopkins** said she urges the Committee to oppose this bill, saying tax credit vouchers will cost taxpayers money. She said proponents claim the state will save money, but she said that is usually speculative. She said tax credit vouchers enable potential discrimination with public funds because unlike public schools, scholarship foundations and private schools receive taxpayer funded vouchers that are not subject to the full compliment of civil rights laws. She said the tax credit vouchers may violate the state's constitution, and with all due respect to the Attorney General's Office, the ACLU sometimes disagrees with their analysis. **Ms. Hopkins** said in this case, this bill may violate the state's no-aid provision in article 9, section 5 because **H 286** grants tax credits to those who donate to a 501(c)(3) and the 501(c)(3) gives the vouchers to the parents. She said a court could find that is too attenuated to run afoul of the no-aid clause. She said the ACLU in New Hampshire filed claims and won that claim in state court.

**Chairman Siddoway** apologized that the Committee is out of time and he invited anyone else who would like have their testimony recorded to give a written statement to the Committee Secretary. He acknowledged Wayne Hoffman, who supports the bill, and Bert Marley, who opposes the bill, for their attendance. He invited Senator Nonini to the podium for a quick closing statement before the vote.

**Senator Nonini** thanked the Chairman for the hearing. He said he wanted to reiterate that this is 'not' a "voucher" but it is a "credit," and there is a distinct difference, which is addressed in the Attorney General's opinion and the information from the Cato Institute. He said it is constitutional and it's about school choice. He said he hopes he has provided enough data and information on the fiscal impact, along with the accompanied evidence, to show the bill will 'save' the state money. He said he would like the Joint Finance and Appropriations Committee to take that savings and appropriate it to the public education budget. It is not costing the state money. He said the state should not always worry about the income in public schools, it should sometimes worry about the 'outcome.' **Senator Nonini** said parents need a choice and he thinks Idaho should step up.

**Senator Vick** said he thinks this is good legislation as it helps low income people to have an opportunity for a choice that others have.

**MOTION:**

**Senator Vick** moved to send **H 286** to the floor with a **do pass** recommendation. **Senator Vick** requested a roll call vote. **Senator Bayer** seconded the motion.

**DISCUSSION:** In discussion, **Senator Hill** said he wanted to explain why he cannot support the motion. He said there are a lot of reasons, but one is this is a 501(c)(3) organization. The donor is going to get a charitable contribution deduction both for federal and state income taxes, in addition to the credit for the full amount they contributed. The donor is going to 'profit' off of making this donation at the cost of the public, and he does not think that is what fiscal conservatives or the state republican party wants to have happen. He said he cannot support something that is just not fair from the standpoint that it will cost the public money to administer the program. **Senator Hill** said it will cost the public at least \$107 for every \$100 donated, not counting what the federal government is going to pay. He said for a \$100 contribution, ten percent goes to administrative costs, so it will cost the public \$107 for every \$90 that goes to the students. He said the state would be a lot better off making the appropriation of \$8 million to these schools; he said, "however, our constitution won't let us."

**ROLL CALL VOTE:** In the **roll call vote**, **Senators Bayer** and **Vick** voted **aye**. **Senators McKenzie, Hill, Johnson, Werk**, and **Lacey**, **Vice Chairman Rice** and **Chairman Siddoway** voted **nay**. The motion failed on a 2 to 7 vote. **H 286** failed in Committee.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:03 p.m.

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Senator Siddoway  
Chairman

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Christy Stansell  
Secretary